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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Leanne Landeros, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BERNADINO**

GINA HOLLEY, an individual and on behalf of all others similarly situated,

Plaintiff,

v.

SERENITY LODGE, a California Corporation; ZINNIA HEALTH LLC, a Delaware limited liability company; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CIVSB2426295

[Assigned for all purposes to the Hon. Cory G Lee in Dept. S-37 SBJC]

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF JOSHUA SHIRIAN, PLAINTIFF GINA HOLLEY, AND KEVIN LEE IN SUPPORT THEREOF**

HEARING INFORMATION:

DATE: December 3, 2025
TIME: 8:30 A.M. LL
DEPT: S-37 SBJC

$60.00 pd

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on December 3, 2025 at 8:30 a.m., or as soon thereafter as they may be heard in Department S-37 SBJC of the Superior Court of the State of California for the County of San Bernadino, located at 247 W 3rd St, San Bernardino, CA 92415 plaintiff Gina Holley ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, will and hereby does move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Settlement Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all individuals who are or were employed by Defendants Serenity Lodge ("Serenity") or Zinnia Health LLC ("Zinnia" and collectively "Defendants") as hourly-paid, non-exempt employees in California at any time from August 26, 2020 through May 31, 2025 ("Class Period").

2. Preliminarily approving Plaintiff Gina Holley as Class Representative for the purpose of settlement only.

3. Preliminary approving Joshua Shirian and Aaron Yousefzadeh of Shirian Law, P.C., as Class Counsel for the purpose of settlement only.

4. Preliminarily approving the settlement claims under the terms set forth in the Class Action and PAGA Settlement Agreement ("Settlement Agreement").

5. Preliminarily approving payment of the Gross Settlement Amount of $525,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Court-Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") submitted herewith.

7. Appointing Phoenix Class Action Administration Solutions ("Phoenix" or "Settlement Administrator") to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement.

8. Preliminarily approving the payment not to exceed $10,000.00 for settlement administration to Phoenix from the Gross Settlement Amount.

9. Preliminarily approving a Class Representative Service Award of $7,500.00 to Plaintiff in consideration for Plaintiff's extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $183,750.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $20,000.00.

12. Preliminarily approving PAGA penalties in the amount of $20,000.00, seventy-five percent (75%) or $15,000.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $5,000.00 of which will be distributed to Aggrieved Employees, defined as all individuals who are or were employed by Defendants as hourly, non-exempt employees in California at any time from August 26, 2023 through May 31, 2025 ("PAGA Period").

13. Entering an Order preliminarily approving the Settlement consistent with the terms of the Settlement Agreement.

Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable and adequate.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Joshua Shirian, Plaintiff and Kevin Lee, and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: August 11, 2025

SHIRIAN LAW, P.C.

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JOSHUA SHIRIAN
AARON YOUSEFZADEH
Attorneys for Plaintiff, GINA HOLLEY, on behalf of herself and all others similarly situated and aggrieved

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Gina Holley ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, hereby applies for preliminary approval of the proposed Class Action and PAGA Settlement Agreement and Class Notice ("Settlement," "Agreement" or "Settlement Agreement") upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Joshua Shirian as Exhibit "1."

On April 30, 2024, Plaintiff filed with the Labor and Workforce Development Agency ("LWDA") and served on Defendants Serenity Lodge ("Serenity") and Zinnia Health LLC ("Zinnia" and collectively "Defendants"), a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of the Aggrieved Employees for various alleged Labor Code violations. The April 30, 2024, PAGA Notice was amended on June 25, 2024 (collectively the "PAGA Notices"). True and correct copies of the PAGA Notices are attached to the Declaration of Joshua Shirian as Exhibit "2."

On August 26, 2024, Plaintiff filed a putative wage-and-hour class action alleging that, during the Class Period, Defendants, as it pertains to Class Members: (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof; (5) failed to pay all wages due upon separation from employment; (6) failed to issue accurate and compliant wage statements; (7) failed to timely pay wages; (8) failed to indemnify/reimburse necessary expenses; and (9) engaged in unfair competition (the "Action").

On October 9, 2024, after sixty-five (65) days had passed since Plaintiff filed the PAGA Notices, without any action by the LWDA with respect to the alleged Labor Code violations, Plaintiff filed a First Amended Class and Representative Action Complaint in the Action seeking PAGA civil penalties against Defendants for the Labor Code violations alleged in the PAGA Notices. The First Amended Complaint in the Action is the "Operative Complaint."

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Shortly thereafter, the Parties agreed to exchange informal discovery and attend a mediation, in advance of which Class Counsel was provided with, among other things: (1) the operative employee handbooks and written policies and procedures related to the claims alleged in the Operative Complaint; (2) Plaintiff's personnel files and payroll and time records; (3) Defendants' California nonexempt employee lists (with employees' names and contact information removed); (4) exemplars of wage statements for ever year from 2023 through 2025; (5) representative randomized sampling of corresponding time and pay records for 25% of the putative Class; (6) Class data points, including, for both current and formerly-employed putative Class Members between the start of the Class Period (August 26, 2020) and the date of mediation (April 1, 2025), total numbers of putative Class Members, approximate numbers of Workweeks worked, Pay Periods, and wage statements issued, and average hourly rates; and (7) PAGA group data points, including, for both current and formerly-employed Aggrieved Employees between the start of the PAGA Period (August 26, 2023) and the date of mediation (April 1, 2025), total numbers of Aggrieved Employees, approximate numbers of Workweeks worked, Pay Periods, and wage statements issued.

Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129-130 (*Dunk/Kullar*).

On April 1, 2025, the Parties participated in a full-day mediation before Katherine J. Edwards, Esquire, a well-regarded mediator experienced in mediating complex labor and employment matters. The Parties were able to resolve the matter at mediation and reached the Settlement to resolve the Action. Attached to the Declaration of Joshua Shirian as Exhibit "1" thereto is the Settlement Agreement between the Parties.

Class Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action and the PAGA Notices, and have concluded that the Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Action through trial and any appeals, the risks and costs of further litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received by Settlement Class Members.

## II. THE SETTLEMENT

Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq*., the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the Declaration of Joshua Shirian as Exhibit "1" thereto. A summary of the terms of the settlement are as follows:

Defendants will stipulate, for purpose of this Settlement only, as follows:

- Certification of a class ("Settlement Class," "Settlement Class Members" or "Class Members") defined as: all individuals who are or were employed by Defendants as hourly-paid, non-exempt employees in California at any time from August 26, 2020 through May 31, 2025 ("Class Period").
- Defendants will pay $525,000.00 ("Gross Settlement Amount") to resolve the Action.
- Defendants represent that the Settlement Class worked approximately 17,328 Workweeks during the Class Period. If the number of Workweeks worked by the Class Members during the Class Period is greater than 10% above that estimated by Defendants, or 19,061 Workweeks worked, then Plaintiff shall have the right to request a pro-rata increase in the Gross Settlement Amount equal to the percentage increase in Workweeks above 19,061 (*i.e.*, if the total Workweeks increases by 12%, then a 2% increase to the Gross Settlement Amount). Thus, for example, should there be 20,061 Workweeks in the Class Period as of the date the Court enters an Order granting Preliminary Approval of the Settlement (*i.e.*, 1,000 more Workweeks than the 19,061 permitted by the 10% increase above the 17,328 Workweeks that formed the basis of agreeing upon the Gross Settlement Amount), then the Gross Settlement Amount shall be increased by $30,300 (20,061 Workweeks – 19,061 Workweeks [=1,000 workweeks] x $30.30/Workweek.)

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- Defendants will pay the employer's share of payroll taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the Class Action Settlement based on the total number of Workweeks[1] worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $10,000.00 will be paid out of the Gross Settlement Amount.
- Class Counsel, comprised of Joshua Shirian and Aaron Yousefzadeh of Shirian Law, P.C., hereby apply for, and Defendants will not oppose, attorneys' fees of up to thirty-five percent (35.00%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $183,750.00 and actual costs, not to exceed $20,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel hereby apply for, and Defendants will not oppose, a Class Representative Service Award of $7,500.00 for Plaintiff, which will be paid out of the Gross Settlement Amount.
- "Aggrieved Employees" means all individuals who are or were employed by Defendants as hourly, non-exempt in California at any time from August 26, 2023 through May 31, 2025 ("PAGA Period").
- The Parties have agreed to allocate $20,000.00 of the Gross Settlement Amount as PAGA penalties, seventy-five percent (75%) or $15,000.00 of which will be paid to the LWDA, and twenty-five percent (25%) or $5,000.00 of which will be distributed to the Aggrieved Employees.

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[1] "Workweek" means any week during which a Settlement Class Member was employed by Defendants Zinnia or Serenity as an hourly, nonexempt employee in California during the Class Period, and may be based on either: (1) weeks during at least one day was worked; or (2) hire dates and, where applicable, last dates worked or separation dates, re hire dates, dates of any periods of leave, and dates of any transition between nonexempt and exempt status.

- Aggrieved Employees will be paid their *pro rata* share of the twenty-five percent (25%) of the PAGA Penalties based on the total number of PAGA Pay Periods[2] worked during the PAGA Period.
- Participating Class Members will receive an Individual Class Payment and Aggrieved Employees will receive an Individual PAGA Payment as applicable. Individual Class Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. In the event that any checks mailed to Participating Class Members and/or Aggrieved Employees are not cashed, deposited, or otherwise negotiated within the 180-day period, then the checks shall be sent to the California State Controller's Office Unclaimed Property Fund in the name of the individual, and such Class Members and/or Aggrieved Employees shall nevertheless be bound to the Settlement and the Final Approval Order. Thus, there shall be no "Unpaid Residue" subject to the requirements of California Code of Civil Procedure section 384.

## III. THE TWO-STEP APPROVAL PROCESS AND THE PRESUMPTION OF FAIRNESS

Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal. Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. (*See id.*)

## IV. THE PRESUMPTION OF FAIRNESS

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-

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[2] "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee was employed by Defendants Zinnia or Serenity as an hourly, non-exempt employee in California during the PAGA Period, and may be based on either (1) pay periods during at least one day was worked; or (2) hire dates and, where applicable, last dates worked or separation dates, re-hire dates, dates of any periods of leave, and dates of any transition between nonexempt and exempt status.

cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.) Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of the acceptable settlements.

Here, the Settlement is fair, reasonable, and adequate and negotiations were conducted in good faith with the aid of a well-respected and neutral mediator.

## V. <u>SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS</u>

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769, subd. (f).)

Attached to the Declaration of Joshua Shirian as Exhibit "1" thereto is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit "A" is the proposed Court-Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval ("Class Notice") to be distributed to Class Members. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use Phoenix Class Action Administration Solutions ("Phoenix" or "Settlement Administrator"), an experienced Settlement Administrator, to administer the Settlement.

## VI. <u>THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE</u>

### A. <u>The Settlement was Negotiated at Arm's-Length and is not Collusive</u>

The Settlement that has been reached, subject to this Court's approval, is a product of substantial efforts by the Parties and their counsel. The Settlement was reached after: extensive factual and legal investigation and research; substantial negotiation regarding the scope of informal discovery; an exchange of documents and information that included review of a 25% randomized sampling of the time and payroll records in the Class Period and analysis thereof with the aid of

Plaintiff and expert consultants; an analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of Pay Periods and number of Aggrieved Employees in the PAGA Period extrapolated and carefully analyzed by Class Counsel, attorneys and staff of Shirian Law, P.C., and expert data consultants from the data produced by Defendants for calculating PAGA penalties, number of Class Members potentially eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiff's employment records; conversations with Class Members to obtain first-hand accounts of their experiences, verify factual allegations, identify systemic wage and hour practices, and evaluate the consistency of any violations across various timeframes; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day session of mediation, followed by months of further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

While Class Counsel believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiff's claims in this Action—claims that involve approximately 348 Class Members during the Class Period—would require substantial preparation and discovery and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

In light of the sharply contested legal and factual issues, the risks of continued litigation, issues of collectability, and the substantial benefits to Class Members under the Settlement, the terms and conditions of this Class Settlement are fair and reasonable to all sides.

**B. <u>The Settlement Amount is Well Within Range of Reasonableness</u>**

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness. Based on documents and information provided by Defendants, Class Counsel understand there were approximately

17,328 Workweeks from August 26, 2020 through April 1, 2025.

**1. Unpaid Wages for Failure to Pay Off-the-Clock Work**

Class Counsel theorized, based on Plaintiff and Class Members' narrative evidence and documents produced by Defendants, that Defendants failed to pay all wages due to Class Members because: (1) Defendants rounded Class Members' time entries to their detriment; and (2) Defendants required Class Members to work off-the-clock or Class Members spent time off-the-clock under Defendants' control.

a. Detrimental Rounding

Class Counsel advanced a theory at mediation, based on documents produced by Defendants, that Defendants had a practice of detrimental rounding of time entries of Plaintiff and Class Members. Class Counsel theorized, based on time and pay records produced by Defendants and expert consultant analysis thereof, that Defendants ultimately failed to pay Class Members for 0.086 hours per Workweek due to rounding, without accounting for time gained due to Defendants rounding practice. Class Counsel understand from the documents produced that 73.7% of all shifts worked by Class Members were over eight (8) hours in length, Class Members had an average regular hourly rate of pay of $22.12, and there were 17,328 Workweeks worked by the Class Members. Thus, one calculation performed by Class Counsel for mediation resulted in **Defendants' exposure for lost time due to rounding in the amount of $53,779.79** [(17,328 Workweeks x 0.086 hours/Workweek x .737 shifts greater than or equal to eight hours x $22.12/hour x 1.5 overtime rate) + (17,328 Workweeks x 0.086 hours/Workweek x .263 shifts under eight hours x $22.12/hour x 2 in liquidated damages)].

Class Counsel understand from the mediator and mediation process that Defendants defend that their rounding practices were neutral and resulted in roughly equal amounts of overpaid and underpaid shifts. Further, Defendants argued that Class Counsel's analysis failed to account for instances in which employees were overcompensated as a result of the rounding policy, and thus Plaintiff's analysis was exaggerated. Thus, Defendants maintained that their rounding practices were legal and did not result in any compensable damages.

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b. Off-the-Clock Work

Class Counsel contend, based on Plaintiff's narrative evidence and documents produced by Defendants, that Class Members worked off-the-clock for a conservative estimate of thirty (30) minutes each workweek throughout the Class Period because: (1) Class Members arrived before clocking in to complete pre-shift tasks and (2) Class Members completed written reports of clients after clocking out.

Class Counsel understand, based on time and payroll records produced by Defendants that there were approximately 17,328 workweeks and 80,972 shifts during the Class Period, approximately 73.7% of all shifts were exactly or more than eight (8) hours in length, and Class Members had an average hourly rate of $22.12. Thus, one calculation performed by Class Counsel resulted in **Defendants' exposure for alleged unpaid off-the-clock work in the approximate amount of $312,673.19** ((.5 hr/workweek x $22.12/hr x 1.5 overtime rate x 17,328 workweeks x .737 shifts greater than or equal to eight hours) + (.5 hr/workweek x $22.12/hr hourly rate x 2 liquidated damages x 17,328 workweeks x .263 shifts under eight hours)).

Class Counsel understand that Defendants made the following defenses in connection with this claim: Defendants argued that they did not require Class Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work; Defendants contend that its policies prohibit off-the-clock work; Defendants also contend that any theory that off-the-clock work was performed is purely speculative, such off-the-clock work was voluntary if it occurred, unapproved, and certainly not indicative of a pattern or practice. Additionally, Defendants contend that any allegations that Class Members were required be under Defendants' control off-the-clock would necessitate an individualized inquiry into when and why, making this claim not subject to class treatment and any trial in this litigation unmanageable. Thus, Defendant contends that no damages can be recovered here, and, even if, *arguendo*, they could, an estimate of thirty (30) minutes of unpaid work off-the-clock of Class Members for *every single workweek* during the Class Period is a wild exaggeration of time spent working off-the-clock if *any* such time was spent.

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### 2. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel theorized, based on narrative evidence of Plaintiff and Class Members as well as documents produced by Defendants, that Defendants' meal period practices throughout the Class Period were non-compliant because Class Counsel allege: (1) Class Members were not informed that they were entitled to a meal period premium in the event a meal period is interrupted, not duty-free, cut short or not received; (2) meal period policies were not in effect for a minor portion of the Class Period; (3) Defendants' meal period policies were non-complaint because they did not make clear that Class Members are entitled to meal period premiums for late, interrupted, or missed meals; and (4) meal periods were missed or taken late due to the amount of tasks assigned.

Class Counsel understands from the documents provided by Defendants and analysis of expert data consultants retained by Class Counsel, that there were 11,120 shifts over five hours with alleged meal period violations during the Class Period (late, short, missed meal periods, no meal period premiums were ever issued, and others).

Additionally, Class Counsel understands that there were approximately 61,112 shifts over five hours with meal periods that were exactly thirty (30) minutes in length, but not accurately tracked or recorded. Accordingly, in one of Class Counsel's calculations, a conservative assumption was made that 33% of the meal periods recorded as exactly thirty (30) minutes in length were not properly tracked or recorded.

As such, one calculation made by Class Counsel resulted in **Defendants' maximum exposure for non-compliant meal periods in an approximate amount of $649,973.20** [(11,120 eligible shifts x $22.12/hour) + (61,112 shifts with meal periods exactly thirty minutes in length x 22.12 x .33) – (1,903 Meal Period Premiums paid x $22.12/hour)].

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants argue that they had compliant meal period policies and practices; Defendants argue that Class Members took timely and full meal periods; Defendants contend that their policy requires their employees to take timely and full meal periods; Defendants further contend that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of its meal period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Defendants also asserted that meal periods recorded as exactly thirty (30) minutes in duration were neither shortened nor synthetically recorded, and therefore asserted that no liability arises from such meal period entries. Moreover, Defendants further contend that meal period premiums were properly paid to Class Members for any non-compliant meal periods during the Class Period. Finally, Defendants argued that many Class Members signed valid meal period waivers, thereby doing away with the vast majority of any alleged non-compliant meal periods. Thus, Defendants contend that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

**3. Recovery of Damages for Non-Compliant Rest and Recovery Periods**

Class Counsel theorized, based on Plaintiff's narrative evidence, that Defendants' rest break practices throughout the Class Period were non-compliant because Class Members were not permitted to take rest periods within the fifth hour or, on occasion, allowed to leave the premises. Notably, there was no rest period premiums ever issued throughout the Class Period and approximately 79,438 rest period eligible shifts were greater than 3.5 hours in length. Thus, one calculation performed by Class Counsel resulted in, assuming a very conservative 40% violation rate for rest-eligible shifts, **Defendants' exposure for failure to provide compliant rest periods in an approximate amount of $702,967.42** (79,438 shifts x .40 violation rate x $22.12/hour).

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants argue they had compliant rest period policies and practices; Defendants argue that Class Members took timely and full rest periods; Defendants contend that their policies require their employees to take timely and full rest periods; Defendants allege that Class Members were advised of the right and obligation to take complaint rest periods in their employee handbook and during training; Defendants further contend that any instance of a Class Member failing to take a compliant rest period was voluntary, in violation of their rest period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Moreover, Defendants argue that Class Members were provided a reasonable opportunity to take uninterrupted rest breaks and were allowed to leave the premises. Thus, Defendants contend that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

### 4. Wage Statement Violations

Class Counsel theorized that Class Members are entitled to recover penalties for Defendants' alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e), for the derivative impact of the failure to pay all wages owed on providing accurate information on wage statements. Specifically, Class Counsel theorized that penalties are owed under Labor Code section 226 due to, at minimum, Defendants' failure to pay premium wages for alleged overtime and non-compliant meal and rest breaks. A non-exempt employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a), is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period. Class Counsel understand from the data provided by Defendants that there were 2,415 pay periods during the relevant statutory time period for Class Members. If, in fact, Class Members worked every off-the-clock every shift as set forth above, and no rest premiums were paid, every wage statement would thus, Class Counsel theorized, violate Labor Code section 226.

Thus, **Defendants' maximum exposure for wage statement violations would be $241,500** (2,415 pay periods x $100/pay period).

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants contend that the wage statements issued to the employees fully complied with Labor Code section 226; Defendants contend that because they believe no wages are unpaid that, thus, there can be no derivative penalties. Further, Class Counsel also understand the risks inherent in this claim if the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that a Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendants' conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation used does not take into account the first pay period violation only being

$50 and the fact that all Class Members did not work all pay periods and, therefore, do not qualify for the maximum penalty of $4,000 as calculated in Plaintiff's exposure model used at mediation.

### 5. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to up to 30 days' worth of wages as waiting time penalties for not being paid all wages due upon separation from employment. Class Counsel theorized, based on relevant documents provided by Defendants, that, under Labor Code section 203, Defendants are liable to pay each Class Member, who was terminated or who left his or her employment during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at the time of termination or resignation. Based on relevant documents provided by Defendants, there were approximately 242 Class Members who were terminated or resigned during the relevant statutory period.

Thus, one calculation performed by Class Counsel resulted in **Defendants' maximum exposure for waiting time penalties to be $1,284,729** (242 separated Class Members x $22.12/hour x 8 hours x 30 days).

Class Counsel understand that Defendants contend that there is no credence to Plaintiff's off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory. Also, Defendants contend that many Class Members signed valid meal period waivers, that they had compliant meal period policies and practices, and that Class Members took timely and full meal periods such that no class action is even tenable in this Action. Finally, Defendants contend that their actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties are owed.

### 6. Failure to Timely Pay Wages

Class Counsel, based on Plaintiff's narrative evidence, theorized Defendants failed to pay wages to Class Members for work performed in a timely manner in violation of Labor Code section 204. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

**7. Failure to Reimburse**

Class Counsel, based on Plaintiff's narrative evidence, theorized Defendants failed to reimburse Class Members for business expenses in violation of Labor Code section 2802. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

**8. PAGA Penalties**

Class Counsel understand from the time and payroll data provided by Defendants that there were 2,415 Pay Periods worked by approximately 148 Aggrieved Employees during the PAGA Period. Plaintiff's claims in the Action under PAGA asserted each of the foregoing alleged Labor Code violations, as well as other additional Labor Code violations as set forth in Plaintiff's PAGA Notices and the First Amended Complaint. Defendants contend that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. With this in mind, and because Class Counsel through investigation and discovery did not come to the conclusion that Defendants at any time were notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notices and PAGA claims, Class Counsel adjusted the exposure model for Defendants to include only initial violation rates.

While Class Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendants' maximum exposure in PAGA penalties as follows:

a. <u>Overtime Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $120,750 (2,415 pay periods x $50).

b. <u>Minimum Wage Violations</u>: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single PAGA Member in the PAGA Period, this amounts to a maximum exposure of $241,500 (2,415 pay periods x $100).

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c. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $120,750 (2,415 pay periods x $50).

d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $120,750 (2,415 pay periods x $50).

e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendants indicates that there were 87 (Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $8,700 (87 separated Aggrieved Employees x $100).

f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $241,500 (2,415 pay periods x $100).

g. Failure to Reimburse Work Expenses: Labor Code section 2699 would be the appropriate penalty for failure to reimburse work expenses, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id*. at 247-248). However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

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h. Failure to Pay Vacation Pay Upon Separation of Employment: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

i. Violation of Labor Code § 204: Labor Code section 204 states that labor performed between the first (1st) and fifteenth (15th) days, inclusive, of any calendar month shall be paid for between the sixteenth (16th) and twenty-sixth (26th) day of the month during which the labor was performed, and labor performed between the sixteenth (16th) and the last day, inclusive, of any calendar month shall be paid for between the first (1st) and tenth (10th) day of the following month. Labor Code section 210 would be the appropriate penalty for violation of Labor Code section 204. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

j. Violation of Labor Code § 246: Labor Code section 246 states that Defendants must provide paid sick leave for employees who have worked more than 30 days within one year of employment. Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. This amounts to a maximum exposure, using the initial violation rate, of $241,500 (2,415 pay periods x $100).

k. Violation of Labor Code § 404: Labor Code section 404 states that Defendants shall reimburse Aggrieved Employees, plus interest, for the deposits made for uniforms immediately upon the return of such property. Labor Code section 2699 would be the appropriate penalty for failure to return uniform deposits. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

l. Violation of Labor Code § 2810.5: Upon hire, employers must provide each Aggrieved Employee a notice under Labor Code section 2810.5 with the information set out under that Labor Code section. Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

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m. Suitable Seating Violations: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation for the failure to provide suitable seating to employees when the nature of work reasonably permits the use of seats. However, after investigation and discovery, Class Counsel did not attribute significant value to this claim at the time of mediation.

n. Unfair Competition and Restraints on Lawful Conduct: Labor Code section 2699 would be the appropriate penalty for violations of Labor Code sections 96, 98.6, 232, 232.5, and 1197.5 subdivision (k), which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation for requiring employees to sign unlawful agreements, conducting unlawful pre-employment inquiries and background checks, and unlawful reliance on salary history when making hiring and compensation offers. Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $241,500 (2,415 pay periods x $100).

o. Conclusion: In sum, Class Counsel calculated Defendants' total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be **$1,336,950**. Class Counsel understand that Defendants argue the following in connection with this claim: Defendants contend that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated; Defendants argue that PAGA penalties cannot and should not be stacked; Defendants assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial; Defendants deny that a violation for each pay period can be established; Defendants contend that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation by Defendants are knowing and intentional. Defendants insist that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

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Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*), Class Counsel also understand the risks inherent should the Court not exercise its discretion to grant any PAGA penalties, in addition to potential issues on the merits, trial manageability, and issues the possibility that the Court does not use permit stacking of penalties or permit the use of the subsequent violation rate when providing penalties. Altogether, Class Counsel believe an 80% discount of this claim to be reasonable, resulting in a valuation of **$267,390** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($1,336,950 x 0.8).

**9. Conclusion**

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendants' maximum exposure to be approximately $3,513,012.60. In all, Class Counsel obtained a Gross Settlement Amount of **$525,000.00**. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe that the Settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

Moreover, $20,000 of the Gross Settlement Amount was attributed to PAGA Penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendants unnecessarily punitive.

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## VI. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seek an attorneys' fees award of *up to* thirty-five 35.00% of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $183,750.00. Class Counsel also seek reimbursement of costs not to exceed $20,000.00. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendants and are well within established guidelines.

## VII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE

Plaintiff is entitled to an enhanced award for her service as Class Representative, for answering extensive questions by Class Counsel, for being available and answering questions during mediation, and for the risks in being the named plaintiff including, without limitation, intrusive discovery and costs of litigation. Additionally, Plaintiff made meaningful efforts to engage with fellow Class Members prior to mediation, to assist in corroborating factual allegations and identifying common issues. Defendants do not oppose the requested enhancement to Plaintiff. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seek an extremely limited enhancement of $7,500.00 to Plaintiff, for her service.

## VIII. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

### A. The Class should be Preliminarily Certified

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class;" and (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class." (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

**1. Ascertainability** – **"**Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Members definition (*i.e.*, all non-exempt, hourly-paid employees who performed work for Serenity or Zinnia in California at any time during the Class Period) is derived from the First Amended Complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt employees of Defendants. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt employee who worked in California for Defendants during the Class Period, based solely from Defendants' payroll records, which amounts to approximately 348 persons.

**2. Numerosity** – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendants have identified at least 348 Class Members. That is sufficiently numerous to establish the numerosity requirement.

**3. Commonality** – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4$^{th}$ 145, 153.)

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This Action is brought to resolve common issues that include whether Defendants failed to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and rest periods, whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above.

4. **Typicality** – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Plaintiff's claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt employee like other Class Members; (2) complains of not being paid for all time under Defendants' control or suffered and/or permitted to work for Defendants; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above.

5. **Adequacy of Representation** - To maintain a class action, the representative plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Both criteria are met in this instance:

**(i) <u>No Disabling Conflict of Interest Exists Between the Class Representative and the Class</u>**

No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because Plaintiff alleges to have been damaged by the same alleged conduct of Defendants (*i.e.*, Plaintiff classified as a non-exempt, hourly-paid employee, not paid premium pay, etc.) and thus has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

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**(ii) Class Counsel are Experienced Class Action Attorneys**

As set forth in the Declarations of Class Counsel, Class Counsel in this matter consist of experienced class action attorneys, have been appointed as class counsel in other class actions and have a successful "track record" in litigating class actions.

**6. Superiority of Class Action** - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

It deals with common issues that are most efficiently adjudicated together, as indicated above. Moreover, with at least 348 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

**7. Conclusion** – Thus, because this Class Action meets all criteria for certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes, it should be certified for purposes of effectuating this Settlement.

## IX. CONCLUSION

Therefore, the Parties request the Court grant preliminary approval of the proposed Settlement.

Dated: August 11, 2025

SHIRIAN LAW, P.C.

________________________________________
JOSHUA SHIRIAN
AARON YOUSEFZADEH
Attorneys for Plaintiff GINA HOLLEY, on behalf of herself and all others similarly situated and aggrieved

<u>**PROOF OF SERVICE**</u>

**STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 11110 Ohio Ave., Suite 106, Los Angeles, California 90025.

On August 11, 2025, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF JOSHUA SHIRIAN, PLAINTIFF GINA HOLLEY, AND KEVIN LEE IN SUPPORT THEREOF; [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND REPRESENATIVE ACTION SETTLEMENT AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES ONLY** to be served by electronic transmission to the below referenced electronic e-mail addresses as follows:

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Counsel for Defendants SERENITY LODGE and ZINNIA HEALTH LLC

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 11, 2025 at Los Angeles, California

Joshua Shirian