

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
tkorobkin@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
and Aggrieved Employees

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

LAMONT SOLOMON, as an individual and on
behalf of all others similarly situated,
Plaintiff,

vs.

APRIA HEALTHCARE LLC, a Delaware
Corporation; and DOES 1 through 100,
Defendants.

Case No. RIC2002553

*[Case assigned for all purposes to the Hon.
Harold W. Hopp, Dept. 10]*

**DECLARATION OF PAUL K.
HAINES IN SUPPORT OF
PLAINTIFF LAMONT
SOLOMON'S MOTION FOR
APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS'
GENERAL ACT AND
REASONABLE ATTORNEYS'
FEES, COSTS, AND
ENHANCEMENT AWARD**

Date: June 20, 2022
Time: 8:30 a.m.
Dept.: 10

Reservation ID: 093259962204

Complaint Filed: July 9, 2020
Trial Date: None Set

I, PAUL K. HAINES, declare as follows:

2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy, located in Encino, California. I also spent a semester in law school working as an extern for the Honorable Edward Rafeedie, District Judge for the United States District Court for the Central District of California.

4. During my employment at Littler Mendelson, I played a significant role in the class actions that I was staffed on, as I was often the only associate staffed on such cases. In particular, I received a wide-array of wage and hour class action experience performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions from state court to federal court; drafting and responding to written discovery; drafting and opposing discovery related motions; arguing discovery related motions; drafting motions to consolidate related matters; interviewing putative class members and obtaining declarations in

1 connection with class certification; drafting oppositions to motions for class certification;
2 drafting motions for decertification following class certification; conducting exposure analyses
3 to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class
4 certification and potential damages resulting from such claims; drafting mediation briefs; serving
5 as the primary contact to in-house counsel; deposing named plaintiffs and putative class
6 members; deposing retained expert witnesses; and defending the depositions of corporate
7 witnesses. In short, I played an integral role in all aspects of litigation from the inception of a
8 matter through and beyond class certification. I also supervised the work of several junior
9 attorneys who were staffed on the same wage and hour class actions.

10 5. In June 2011, I voluntarily resigned from Littler Mendelson to accept a position
11 with the international law firm of Morgan, Lewis & Bockius LLP, at its Los Angeles office, where
12 I began working in July 2011. During my employment at Morgan, Lewis & Bockius LLP, I
13 worked exclusively on the defense of wage and hour class and collective actions. For the vast
14 majority of these cases, I was the only associate staffed on the matter, and I performed the same
15 job duties as described in the immediately preceding paragraph. In addition to working on wage
16 and hour class actions, at Morgan, Lewis & Bockius I also worked on a number of “hybrid”
17 actions asserting nationwide wage and hour claims under the Fair Labor Standards Act (“FLSA”),
18 as well as California-specific claims under Rule 23 of the Rules of Civil Procedure.

19 6. In July 2012, I transitioned into litigating wage and hour class actions from the
20 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
21 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
22 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
23 and my law firm is currently responsible for prosecuting over fifty (50) wage and hour class
24 actions filed in both State and Federal courts throughout California. I have been appointed as
25 Class Counsel in over one hundred (100) wage and hour class action settlements in state and
26 federal courts within California. A few examples of the matters in which I have been appointed
27 as Class Counsel, all of which have been granted final approval, include the following: *Sanchez*
28 *v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles,

1 Honorable John S. Wiley, presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-
2 3170 JFW (Ex), United States District Court, Central District of California, Judge John F. Walter
3 presiding; *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa
4 Clara County, Judge Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712
5 HSG, United States District Court, Northern District of California, Honorable Judge Haywood
6 S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206,
7 California Superior Court, County of San Luis Obispo, Honorable Judge Charles S. Crandall,
8 presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court,
9 County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco*
10 *Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County
11 of Los Angeles, Honorable Judge Elihu M. Berle presiding. *Morales v. Caremeridian, LLC, et*
12 *al.*, Case No. BC593191, California Superior Court, County of Los Angeles, Judge William F.
13 Highberger presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-2017-00004339-CU-OE-
14 CTL, California Superior Court, County of San Diego, Honorable Judge Joel R. Wohlfeil,
15 presiding; *Sandoval v. Rotational Molding, Inc.*, Case No. BC640678, Superior Court of
16 California, County of Los Angeles, Honorable Judge William F. Highberger presiding; *Gooding*
17 *v. Vita-Mix Corp., et al*, Case No. 2:16-cv-03898-ODW (JEMx), United States District Court for
18 the Central District of California, Honorable Judge Otis D. Wright II presiding.

19 7. I have also moved to certify and have received an order certifying a class action
20 and/or conditionally certifying a collective action, in the following cases: *Medeiros v. Vortex*
21 *Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior
22 Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of
23 employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance*
24 *Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District
25 of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an
26 unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-
27 3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge
28 John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an

FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties class); *Ontiveros v. Safelite Fulfillment, Inc.*, et al, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties); *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deductions, wage statement violations, and waiting time violations); *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying class of employees for wage statement violations); *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIV DS1712267, San Bernardino Superior Court, Hon. David S. Cohn presiding (certifying wage statement class); *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable Maren

1 E. Nelson presiding (certifying four classes for meal period violations, rest period violations,
2 wage statement violations, and waiting time penalties).

3 8. Of particular relevance to this case, I served as counsel for the plaintiff and
4 aggrieved employees in several PAGA-only settlements, including but not limited to:

- 5 • *Diaz v. Central City Community Health Center, Inc.*, Los Angeles County Superior
6 Court Case No. 19STCV38116, Judge Yvette M. Palazuelos presiding, approved
7 November 2, 2021;
- 8 • *Ramirez v. Hobie Cat Company*, San Diego County Superior Court Case No. 37-
9 2020-00032735-CU-OE-CTL, Judge Richard S. Whitney presiding, approved
10 October 8, 2021;
- 11 • *Corralejo v. TreeSap Farms, LLC*, Orange County Superior Court Case No. 30-2019-
12 01091257-CU-OE-CXC, Judge William Claster presiding, approved December 21,
13 2020;
- 14 • *Salazar v. One Source to Market, LLC*, Ventura County Superior Court Case No. 56-
15 2020-00540150-CU-OE-VTA, Judge Vincent J. O'Neill, Jr. presiding, approved
16 October 5, 2020;
- 17 • *Ibarra v. Baker Commodities, Inc.*, Los Angeles County Superior Court Case No.
18 19STCV06148, Judge Yolanda Orozco presiding, approved September 30, 2020;
- 19 • *Vargas v. Gruma Corp.*, Los Angeles County Superior Court Case No. BC707897,
20 Judge Carolyn B. Kuhhl presiding, approved September 24, 2020;
- 21 • *Cruz v. Fleetwash, Inc.*, Los Angeles County Superior Court Case No.
22 19STCV03033, Judge Stuart M. Rice presiding, approved October 7, 2019; and
- 23 • *Canul v. Basmat, Inc.*, Los Angeles County Superior Court Case No. BC674940,
24 Judge Teresa A. Beaudet presiding, approved on August 22, 2018.

25 9. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
26 Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This is an
27 honor awarded to no more than two and a half percent of attorneys under the age of forty in
28 Southern California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me

1 as a “Super Lawyer,” an honor awarded to no more than five percent of attorneys in Southern
2 California each year.

3 10. Tuvia Korobkin, who is also counsel of record for Plaintiff in this matter, is a 2009
4 graduate of UCLA School of Law. Mr. Korobkin was admitted to the California State Bar in
5 December 2009. Since that time, Mr. Korobkin has practiced almost exclusively in the area of
6 employment litigation, with significant experience prosecuting wage and hour class and
7 representative actions. Mr. Korobkin has been an attorney at my firm since February 2016, first
8 as an associate and, since December 2019, as a Partner. Mr. Korobkin is currently staffed on
9 approximately thirty (30) active wage and hour class and PAGA actions in which he plays a
10 primary role. Mr. Korobkin has been appointed as class counsel in dozens of wage and hour class
11 action settlements in state and federal courts throughout California.

12 11. Alexandra R. McIntosh, an Associate at our firm who is also counsel of record for
13 Plaintiff in this matter, is a 2017 graduate of University of California Irvine School of law. Ms.
14 McIntosh was admitted to the California State Bar in June 2018. Since that time, she has practiced
15 almost exclusively in employment litigation. Ms. McIntosh has been named class counsel in
16 numerous wage and hour class actions. Ms. McIntosh joined our firm in June 2020 and is currently
17 staffed on more than thirty (30) active wage and hour class and PAGA actions in which she plays
18 a significant role.

19 12. On March 30, 2020, Plaintiff, through my office, submitted his PAGA notice letter
20 online to the Labor Workforce Development Agency (“LWDA”), describing Defendant Apria
21 Healthcare LLC’s (“Apria”) alleged Labor Code violations, as required by Labor Code § 2699.3.
22 A true and correct copy of Plaintiff’s PAGA notice letter, including the certified mail receipt and
23 confirming e-mail from the LWDA, is attached hereto as **Exhibit 2**.

24 13. On July 6, 2020, after the 65-day waiting period under Labor Code §
25 2699.3(a)(2)(A), Plaintiff, through my office, filed a Representative Action Complaint
26 (“Complaint”), alleging a single cause of action for PAGA civil penalties. On September 1, 2020,
27 Plaintiff filed the operative First Amended Complaint (“Complaint”) alleging a single cause of
28 action for PAGA civil penalties.

1 14. After Plaintiff propounded initial discovery and counsel for the Parties met and
2 conferred regarding the litigation and Plaintiff's claims, the Parties agreed to mediate with Jeffrey
3 A. Ross, Esq. in an effort to resolve Plaintiff's PAGA claim. In connection with mediation, Apria
4 informally produced information and documents pertaining to Plaintiff and other Aggrieved
5 Employees, including but not limited to payroll and timekeeping records for Plaintiff and a
6 representative sample of Aggrieved Employees; several data points including the number of
7 Aggrieved Employees and their hire and termination dates (where applicable); and relevant wage
8 and hour policy documents, in order for Plaintiff's counsel to investigate Plaintiff's allegations
9 and value the claims prior to mediation. The parties attended mediation with Mr. Ross on April
10 14, 2021. During mediation, the parties vigorously debated the legal bases for Plaintiff's claims
11 and Apria's defenses, the manageability of the case as a representative action, the potential
12 amount of penalties, and the parties' data analyses and conclusions based thereon. With the
13 assistance of Mr. Ross, the Parties agreed to fully and finally resolve Plaintiff's PAGA claim.
14 The Parties subsequently negotiated and finalized the Settlement now before the Court.

15 15. A true and correct copy of the fully-executed Settlement Agreement is attached
16 hereto as **Exhibit 1**. The proposed Explanatory Letter to be mailed to Aggrieved Employees with
17 their settlement payments is attached as Exhibit A to the Settlement Agreement. The Settlement
18 provides for Apria to pay a non-reversionary Gross Settlement Amount ("GSA") of
19 \$1,745,000.00. After deducting amounts for requested attorneys' fees, attorneys' costs, Plaintiff's
20 enhancement payment, and settlement administration costs, the Settlement provides for the Net
21 Settlement Amount ("NSA") to be distributed 75% to the LWDA and 25% to the Aggrieved
22 Employees, pursuant to Lab. Code § 2699(i). Based on a GSA of \$1,745,000.00 and the amounts
23 requested for attorneys' fees, litigation costs, administration costs, and enhancement payment, the
24 Net Settlement Amount is estimated to be \$1,133,637.48, with the total amount paid to Aggrieved
25 Employees estimated at \$283,409.37, and approximately \$850,228.11 paid to the LWDA.
26 According to data provided by Apria, there are approximately 1,600 Aggrieved Employees. Thus,
27 the average payment to Aggrieved Employee is estimated to be \$177.13.

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1 16. The amount paid to Aggrieved Employees will be distributed to all Aggrieved
2 Employees based on the number of Affected Pay Periods worked by each Aggrieved Employee
3 during the PAGA Period.

4 17. Although he steadfastly maintains his claims are meritorious, Plaintiff
5 acknowledges his position included real risks and uncertainty. Apria asserted several affirmative
6 defenses to Plaintiff's claims. For example, Apria argues that it properly includes on-call pay and
7 bonus payments in its calculation of the regular rate of pay for the purposes of overtime and that
8 it has done so throughout the PAGA Period. Apria further argues it has always maintained
9 compliant wage and hour policies, including legally-compliant overtime policies and has always
10 paid its employees in accordance with those lawful policies. With respect to Plaintiff's claim that
11 the wage statements issued by Apria failed to list the applicable hourly rates for shift differentials,
12 Apria argues that the information can be easily be determined using the information available on
13 the wage statements and simple math (i.e. the amount earned divided by hours worked). Apria
14 argues that because an employee is not required to refer to other documents to determine their
15 rate of pay for shift differentials, Apria's wage statements comply with the requirements of Labor
16 Code section 226(a)(9). As for Plaintiff's claim that wage statements did not include rates of pay
17 or units for on-call pay, Apria argues on-call payments are not paid based on an employee's
18 number of hours worked, nor are they piece-rate units because they are not based on units of
19 employee production, and therefore no hourly rate of pay or piece-rate unit need be included on
20 wage statements pursuant to Labor Code § 226(a)(3) or (9). Apria also argued that wage
21 statements always accurately reflected amounts paid to employees, and thus Apria could not be
22 found liable for wage statement violations under *Maldonado v. Epsilon Plastics, Inc.*, 22
23 Cal.App.5th 1308, 1336 (2018) ("The purpose of section 226 is to *document the paid wages* to
24 ensure the employee is fully informed regarding the calculation of those wages.") (italics in
25 original).

26 18. Apria further maintains that even if the Court awarded PAGA penalties for any of
27 the alleged violations, it would substantially reduce the penalties, as may courts have done, based
28 on Apria's good-faith defenses and the other discretionary factors in Labor Code § 2699(e)(2)

(authorizing reduction in penalties “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”).

19. Plaintiff asserts that he would be able to seek PAGA penalties for each Aggrieved Employee for each pay period in the PAGA limitations period. Based on data provided by Apria, there were approximately 67,000 pay periods through February 2021, near the end of the PAGA period. Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f), Plaintiff estimated a total potential PAGA exposure of \$6,7000,000. However, Apria asserted several affirmative defenses on the merits and argued that Plaintiff would not be able to show a violation occurred in each and every pay period and therefore his damages analysis was substantially inflated. However, because the Court maintains discretion to reduce these penalties, and in light of Apria’s arguments and defenses described above, Plaintiff discounted that figure by 50% for a risk of losing on the merits, and by an additional 40% for risk of the Court reducing penalties, to arrive at a realistic exposure of \$2,010,000. Thus, the proposed \$1,745,000.00 Settlement represents approximately 87% of Plaintiff’s reasonably forecasted total recovery, while avoiding the risks of proceeding through trial.

20. My office is requesting attorneys’ fees of one-third of the Gross Settlement Amount (“GSA”) (i.e., \$581,666.67). Based on my experience in similar wage and hour class and representative actions in California state courts, fee awards in matters such as this one generally equal about one-third of the gross recovery. In addition, and as explained below and in the accompanying Motion, the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent basis. Apria was also represented by experienced wage-and-hour litigation counsel. Thus, the requested fee award is fair, reasonable and adequate and should be approved. The requested fee award is also supported by a cross-check of counsel’s lodestar. The chart below provides a summary of the hours worked by Plaintiff’s counsel:

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Lawyer	Title	Law School Grad Year	Rate	Hrs	Fees
Paul K. Haines	Partner/Principal	2006	\$695	85.5	\$59,422.50
Tuvia Korobkin	Partner	2009	\$650	127.3	\$84,577.50
Alexandra R. McIntosh	Associate	2017	\$400	150.6	\$59,840.00
Paralegals			\$175	29.5	\$5,162.50
Total					\$210,752.50

As shown above, multiplying Plaintiff's counsel's hourly rates by hours worked in this litigation yields a lodestar of approximately \$210,752.50, which results in a reasonable multiplier of about 2.76. I believe the proposed hourly rates for the attorneys at my firm are reasonable in light of our skills, wage and hour litigation experience (including significant experience litigating PAGA actions), as well as fee awards to other attorneys of similar experience in California. The above requested rates are in line with fee awards in the Central District, which includes the County of Riverside. *See, e.g., Taylor v. TIC – The Industrial Company*, No. EDCV-16-186-VAP, 2018 WL 6131198 at *10 (C.D. Cal. Aug. 1, 2018) (Birotte, J.) (in wage and hour class action, finding rates of \$695 for 13th-year attorney, \$625 for 10th-year attorney, and \$425 for 4th-year attorney to be “reasonable and in line with those prevailing in...the Central District of California”); *Edwards v. Chartwell Staffing Services, Inc.*, No. 16-CV-9187-PSG, 2018 WL 10455206 at **6-7 (C.D. Cal. Aug. 17, 2018) (Gutierrez, J.) (in wage and hour class action, finding “hourly rates ranging from \$425 for associates to \$850 for partners” to be reasonable).

21. In addition, the hourly rates requested by the attorneys at my firm are in line with the current *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit 3**. The *Laffey* Matrix has been recognized by California courts as “a widely recognized compilation of attorney rates based on various levels of experience.” *Theme Promotions, Inc. v. News America Mktg. FSI, Inc.*, 731 F.Supp.2d 937, 948 (N.D. Cal. 2010); *see also Reed v. 1-800 Contacts, Inc.*, No. 12-cv-02359 JM (BGS), 2014 WL 29011 at **8-9 (S.D. Cal. Jan. 2, 2014) (cross-checking requested hourly rates against the *Laffey* Matrix and finding that “the *Laffey* matrix lends further credibility” to counsel's requested hourly rates). Pursuant to the *Laffey* Matrix, a reasonable hourly rate for an attorney with my or Mr. Korobkin's level of experience (11th to 19th year out

of law school) is \$764, for an attorney with Ms. McIntosh's level of experience (4th to 7th year out of law school) is \$468, and for paralegals \$208. Each hourly rate sought by my firm is below the relevant hourly rate cited in the *Laffey* Matrix.

22. My office has expended significant time and effort in this case, including but not limited to: (i) initial client intake; (ii) investigating Plaintiff's claims and Apria's potential defenses; (iii) drafting and serving the PAGA notice letter; (iv) drafting and filing the Complaint; (v) propounding formal discovery requests; (vi) conducting significant research and analysis of data and information produced by Defendant in connection with mediation, and, with the aide of an expert, drafting a comprehensive mediation brief, including exposure analysis for potential PAGA penalties; (vii) attending a full-day mediation; (viii) preparing the MOU, long-form Settlement, and other settlement-related documents; and (ix) preparing the accompanying Motion and supporting documents. My firm will also attend the hearing on this Motion, and will oversee the settlement administration process, together with the Settlement Administrator. Given the considerable potential for adverse outcomes in this case, including but not limited to Plaintiff losing on the merits as to his underlying theories of recovery, and/or facing a drastic reduction in potential PAGA penalties, the contingent risk borne by my office was great.

23. This case also involved nuanced legal issues, including the legality of Apria's compensation practices and the availability and amount of PAGA penalties for alleged Labor Code violations. Apria was also represented by experienced wage-and-hour litigation counsel. Thus, the requested fee award is fair, reasonable and adequate and should be approved.

24. Since undertaking representation of Plaintiff, my firm has dedicated substantial resources to this litigation without receiving any compensation to date. My office is requesting reimbursement of \$18,445.85 in total costs. A summary of the costs incurred by my office in connection with this case is attached hereto as **Exhibit 4**. These costs include filing fees, copying costs, mediation fees, expert fees, and other expenses that were all reasonably incurred in the prosecution of this litigation on behalf of Plaintiff and the Aggrieved Employees. These costs include \$68.75 in anticipated costs for filing and serving the instant Motion

1 25. I have extensive experience in this type of litigation, and it is my opinion that the
2 proposed settlement represents a fair and reasonable result for the Aggrieved Employees. My
3 experience in similar matters was integral in evaluating the strengths and weaknesses of the case
4 against Apria and the reasonableness of the settlement.

5 26. I believe the requested \$5,000 service award to Plaintiff is reasonable given
6 Plaintiff's efforts in this case and the risks he undertook on behalf of Aggrieved Employees.
7 Plaintiff provided substantial factual information and documents to my office, was consistently
8 available by phone to answer questions or when my office otherwise needed to contact him, and
9 otherwise assisted in the prosecution of this case. Plaintiff also undertook significant risk of being
10 liable for Apria's costs in the event this case were lost, as well as the reputational risk inherent in
11 suing a former employer on a representative basis. Accordingly, I believe Plaintiff's requested
12 enhancement award is reasonable.

13 I declare under penalty of perjury under the laws of the state of California that the
14 foregoing is true and correct. Executed on May 24, 2022, at El Segundo, California.

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17 Paul K. Haines
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EXHIBIT 1

JOINT STIPULATION FOR SETTLEMENT

This Joint Stipulation for Settlement (“Settlement Agreement”) is reached by and between Plaintiff Lamont Solomon (“Plaintiff”), acting in a private attorney general capacity, and Defendant Apria Healthcare LLC (“Apria” or “Defendant”) (collectively, the “Parties”).

I. DEFINITIONS

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

1. “Action” means the matter titled *Lamont Solomon v. Apria Healthcare LLC, et al.*, Riverside Superior Court, Case No. RIC2002553, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated March 30, 2020.
2. “Aggrieved Employees” consist of all individuals who are or previously were employed by Apria as non-exempt employees in California and who received shift differentials, on call payments or driver safe bonuses during the time period March 30, 2019 to the earlier of approval or 60 days from April 14, 2021, whichever comes first (“PAGA Period”).
3. “Apria” means Apria Healthcare LLC.
4. “Complaint” means the operative First Amended Complaint, filed in the Action on September 1, 2020.
5. “Court” means the Superior Court of California for the County of Riverside.
6. “Gross Settlement Amount” is the non-reversionary sum of One Million Seven Hundred Forty-five Thousand Dollars (\$1,745,000.00) (subject to the Escalator Provision below), which represents the total amount payable under this Settlement Agreement by Apria, including, without limitation, Individual PAGA Payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment of Plaintiff’s service award, and payment to the Settlement Administrator for administration costs.
7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.
8. “LWDA” means the California Labor and Workforce Development Agency.
9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff’s attorneys’ fees up to 35% of the Gross Settlement Amount; (b) Plaintiff’s litigation costs up to \$25,000; (c) Plaintiff’s service award up to \$5,000.00; and (d) administration costs, which are estimated at \$7,500.00.
10. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

11. “PAGA Period” means the time period from March 30, 2019 through the date of court approval of the settlement or 60 days from April 14, 2021, whichever comes first.

12. “PAGA Released Claims” mean all claims for PAGA civil penalties predicated on Apria’s alleged failure to issue accurate itemized wage statements and pay overtime compensation, based on facts and theories alleged in Plaintiff’s March 30, 2020 PAGA notice and in the Action, including claims for PAGA civil penalties based on alleged violations of California Labor Code sections 204, 210, 226, 226.3, 510, 558, 1174, 1194, 1197.1, 1198, and related alleged violations of the California Industrial Commission Wage Orders, that occurred during the PAGA Period (collectively “Released Claims”).

13. “Parties” mean Plaintiff and Apria.

14. “Plaintiff’s Counsel” means Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC and Raphael A. Katri of Law Offices of Raphael A. Katri.

15. “Settlement Administrator” means Phoenix Settlement Administrators.

II. RECITALS

1. Plaintiff worked for Apria as a non-exempt “Delivery Technician” during the PAGA Period and is therefore an Aggrieved Employee.

2. On March 30, 2019, Plaintiff provided written notice to the LWDA (via its website) and Apria (via certified mail) asserting claims for civil penalties under the PAGA stemming from alleged violations of Labor Code §§ 204, 510, 558, 1194 and 1198 for failure to pay overtime and Labor Code §§ 226, 1174, and 1198 for failure to provide accurate and compliant wage statements and failing to keep accurate records of hours worked.

3. On July 6, 2020, Plaintiff filed the Action, which asserts a claim for civil penalties under the PAGA based on the aforementioned alleged violations. On September 1, 2020, Plaintiff filed the operative First Amended Complaint.

4. In connection with mediation, Apria provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees in order for Plaintiff’s Counsel to investigate Plaintiff’s allegations and value the claims prior to mediation.

5. On April 14, 2021 the Parties participated in mediation before mediator Jeffrey A. Ross, Esq. With the assistance of Mr. Ross, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **No Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that his claims do not have merit, or by Apria of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and Apria specifically disclaims any such liability or wrongdoing. Apria does not admit to liability or to the suitability

of this case for representative litigation other than for purposes of settlement. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not, and may not be cited or admitted as, evidence of liability. If the Arbitrator and/or Court does not grant approval of this settlement, then the Parties agree to re-negotiate in good faith in an effort to obtain approval of the settlement.

2. **Gross Settlement Amount.** The Parties agree to settle the Action for the non-reversionary Gross Settlement Amount (“GSA”) of \$1,745,000.00 (subject to the Escalator Provision below). From the GSA, Plaintiff will seek, and Apria shall not oppose: (a) attorneys’ fees of up to 35% of the GSA; (b) attorneys’ litigation costs and expenses related to the Action of up to \$25,000.00; (c) settlement administration costs of approximately \$7,500.00; and (d) a service award to Plaintiff in the amount of \$5,000. After the amounts for attorneys’ fees, costs, administration costs, and service award are deducted from the GSA, the remaining amount shall be known as the “Net Settlement Amount” or “NSA.” Apria shall deposit the full amount of the GSA into an account to be established by the Settlement Administrator, within thirty (30) days of Court approval of the Settlement.

3. **Escalator Clause.** Apria represents there were approximately 67,000 pay periods worked by Aggrieved Employees in California (“Affected Pay Periods”) through February 20, 2021. If the actual number of Affected Pay Periods during the PAGA Period is actually more than 10% greater than this number (i.e., if the total number of Affected Pay Periods during the PAGA Period is actually greater than 73,700), then the Gross Settlement Amount shall increase by the percentage of pay periods in excess of 73,700 (e.g., if the number of Affected Pay Periods during the PAGA Period is actually 12% greater than 67,000, then the Gross Settlement Amount shall increase by 2%), or Apria may elect to fix the end date of the PAGA Period such that the Affected Pay Periods does not exceed 73,700.

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff’s Attorneys’ Fees and Costs.** Apria will not oppose Plaintiff’s request for attorneys’ fees in the amount up to 35% of the Gross Settlement Amount (currently estimated to be \$610,750.00) and costs up to \$25,000.00 incurred in prosecuting this Action. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys’ fees and costs). The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiff’s Counsel.

b. **Plaintiff’s Service Award.** Apria will not oppose Plaintiff’s request for an enhancement payment in the amount up to \$5,000.00 for serving as the representative plaintiff in this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff’s enhancement payment). The Settlement Administrator will report this payment on IRS Form 1099 issued to Plaintiff.

c. Administration Costs. Apria will not oppose a request for the Settlement Administrator's costs, estimated at \$7,500.00, for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Apria, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. **Allocation of Net Settlement Amount.** One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees, proportionally based on each Aggrieved Employee's respective number of Affected Pay Periods worked during the PAGA Period.

a. The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

6. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement and entering judgment thereon, and the Settlement being fully funded, Plaintiff and all Aggrieved Employees will fully and finally release any and all PAGA Released Claims against Apria and its officers, directors, employees, and agents ("Released Parties"), that arose during the PAGA Period. Upon entry of the Order approving the settlement and judgment entered thereon, and the Settlement being fully funded, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

a. Plaintiff acknowledges that he has read this Settlement Agreement, that he fully understands his rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he has had the opportunity to consult with his attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

8. **Confidentiality.** Plaintiff and Plaintiff's Counsel will not make any public disclosure of the terms of this Settlement (including, but not limited to, the Gross Settlement Amount), the negotiations leading to this Settlement, and all documents related to the Settlement, except through public filings to approve the Settlement. Plaintiff's Counsel will take all steps necessary to ensure that Plaintiff is aware of, and will ensure that he adheres to, the restriction against any public disclosure of the Settlement until after the Settlement is filed with the Court. Following approval of the Settlement, Plaintiff and Plaintiff's Counsel will not initiate any communications (directly or indirectly) with the media regarding the Action. Notwithstanding the foregoing, Plaintiff and Plaintiff's Counsel may, in response to a communication initiated by the media, direct the inquiring media member to the public records of the Action on file with the Court.

To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Cal. Labor Code § 2699(1)(2).

9. **Filing of Motion for Approval of PAGA Settlement by Plaintiff's Counsel.**

Plaintiff's Counsel shall be responsible for preparing the Motion for Approval of this PAGA Settlement, and providing notice of this PAGA Settlement to the Labor and Workforce Development Agency.

10. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. However, if the Court declines to approve the Settlement Agreement as drafted, the Parties agree to attempt in good faith to amend the Settlement Agreement to resolve the Court's concerns with the Settlement Agreement, before either Party terminates the Settlement Agreement.

11. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against Apria. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days after entry of the Order approving the settlement, Apria shall provide the Settlement Administrator with information for Aggrieved Employees. Apria will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, total Affected Pay Periods worked during the PAGA Period, and Social Security number. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the settlement. Within 7 calendar days of receiving the Aggrieved Employees' information from Apria, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Affected Pay Periods, Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall report on the total number of

Affected Pay Periods, and obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address (NCOA) database to update the Aggrieved Employees' addresses. Within twenty-one (21) calendar days after the Gross Settlement Amount has been funded, and after receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with Individual PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail, at the address provided by Apria or at the updated address located through the NCOA database search.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee. Any checks returned as non-deliverable on or before the check-cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a "skip-trace" search using the name, address and/or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

No later than 75 days after the date of initial mailing of the Individual PAGA Payments, the Settlement Administrator shall mail a reminder postcard to any Aggrieved Employee whose settlement check was not cashed within 60 days of the date of initial mailing, and shall offer to replace checks that have been misplaced.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed for more than 180 days after issuance (collectively, "Uncashed Checks"), will escheat to *cy pres* recipient, Public Service Law Corporation dba Riverside Legal Aid, which is a 501(c)(3) organization dedicated to providing legal services to indigent residents of Riverside County.

5. **Distribution of Payments.** Within twenty-one (21) calendar days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) Aggrieved Employees as noted above; (2) the LWDA; (3) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and costs; (4) Plaintiff for the Court-approved service award; and (5) the Settlement Administrator for Court-approved administration costs incurred in connection with the Settlement. All payments made by Apria pursuant to this Settlement shall be

held by the Settlement Administrator in an interest-bearing account until they are disbursed, with any accrued interest inuring to the benefit of the Aggrieved Employees in the form of pro rata increases to Aggrieved Employees' Individual PAGA Payments.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiff nor Apria, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement and the Action, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Riverside County, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Riverside.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them regarding the issues contemplated herein, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

6. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the settlement as provided herein; or (ii) the settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions before the Settlement was executed.

7. **Judgment and Continued Jurisdiction.** After approval of this settlement, the Court shall retain jurisdiction over this case to ensure the continuing implementation of the provisions of this settlement agreement under California Code of Civil Procedure Section 664.6 to ensure the continuing implementation of the provisions of this settlement. The Parties further agree that the time within which to bring this Action to trial under California Code of Civil Procedure Section 583.310 shall be extended from the date of the signing of this agreement by all parties until the entry of the approval order and judgment, or if not entered, the date this agreement shall no longer be of any force or effect.

8. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

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

13. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that otherwise might apply under federal or state law.

[SIGNATURES ON FOLLOWING PAGE]

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

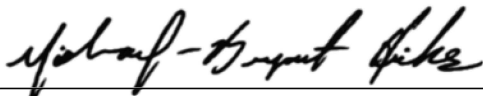
PLAINTIFF

Dated: _____, 2021

Lamont Solomon

APRIA HEALTHCARE LLC

Dated: December 8, 2021



By: Michael-Bryant Hicks
Its: EVP, General Counsel, Corporate Secretary

APPROVED AS TO FORM:

Dated: _____, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff, Lamont Solomon

Dated: December 10, 2021

JACKSON LEWIS P.C.



By: Nathan W. Austin
Attorneys for Defendant, Apria Healthcare LLC
4842-1251-3781, v. 2

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF

Dated: 12/3, 2021


Lamont solomon (Dec 3, 2021 15:23 PST)

Lamont Solomon

APRIA HEALTHCARE LLC

Dated: _____, 2021

By: _____

Its: _____

APPROVED AS TO FORM:

Dated: December 3, 2021

HAINES LAW GROUP, APC

By:  _____

Paul K. Haines

Attorneys for Plaintiff, Lamont Solomon

Dated: _____, 2021

JACKSON LEWIS P.C.

By: _____

Nathan W. Austin

Attorneys for Defendant, Apria Healthcare LLC

4842-1251-3781, v. 2

EXHIBIT A

Re: Payment from Lamont Solomon v. Apria Healthcare LLC
Superior Court of California for the County of Riverside; Case No. RIC2002553

Date: [REDACTED]/[REDACTED]/2021

SIMID
Name
Address

Dear Name:

Enclosed, please find a check made payable to you. This is your payment from the settlement of the lawsuit titled *Lamont Solomon v. Apria Healthcare LLC*, Case No. RIC2002553, pending in the Superior Court of the State of California for the County of Riverside (the “Action”).

The Action was filed against Apria Healthcare LLC (“Apria”) and includes a claim pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). The Action was brought by Plaintiff Lamont Solomon (“Plaintiff”), an Apria employee, on behalf of the State of California and other alleged aggrieved employees. You have been identified as one of the employees on whose behalf the case was brought.

Plaintiff claimed that Apria owed civil penalties under PAGA for alleged violations of the California Labor Code. The parties have reached a settlement of Plaintiff’s claims, and on [DATE], the Court approved the settlement, including the amount of civil penalties to be paid under the settlement. A portion of the civil penalty settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to employees of Apria who were allegedly affected by the alleged violations of the Labor Code. In agreeing to this settlement, Apria does not admit that it is liable in any way to current or former employees for any violations of the California Labor Code or any penalties. The Court has not decided the merits of Plaintiff’s claims.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with Riverside Legal Aid, which is a 501(c)(3) organization dedicated to providing legal services to indigent residents of Riverside County. If you are still employed by Apria, your decision to cash the check will not affect your employment.

While you were not a party to the Action, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all claims under the PAGA that were alleged in Plaintiff’s complaint in the Actions, including claims for civil penalties, attorneys’ fees, costs, or interest under the PAGA based on Apria’s alleged violations of Labor Code sections 204, 210, 226, 226.3, 510, 558, 1174, 1194, 1197.1, 1198, and related alleged violations of the California Industrial Commission Wage Orders, during the time period March 30, 2019 through <<END PAGA PERIOD>> (the “PAGA Period”).

If you have any questions, you can contact Phoenix Settlement Administrators, the Settlement Administrator, at 1-[REDACTED]-[REDACTED].
4828-9556-7861, v. 2

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

March 30, 2020

VIA LWDA WEBSITE

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

Re: *Lamont Solomon v. Apria Healthcare LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Lamont Solomon (“Mr. Solomon”) in claims arising from his employment with Apria Healthcare LLC, and Does 1 through 100 (collectively, “Apria Healthcare”). Mr. Solomon is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Apria Healthcare’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. The “aggrieved employees” whom Mr. Solomon seeks to represent are all current and former non-exempt employees of Apria Healthcare who performed work for Apria Healthcare in the State of California during the one year immediately preceding the date of this letter through the present.

Mr. Solomon, a current non-exempt employee, began working for Apria Healthcare in approximately 2017, and currently works as a Driver. During Mr. Solomon’s employment, Mr. Solomon has regularly worked in excess of 8.0 hours per workday and 40.0 hours per workweek, but Mr. Solomon did not receive overtime compensation equal to one and one-half times his regular rate of pay for all overtime hours worked. Specifically, Apria Healthcare requires Mr. Solomon and other aggrieved employees’ employee to work on-call for up to an entire week at a time. When Apria Healthcare requires Mr. Solomon and other aggrieved employees to work on-call, they are paid a flat rate for every day that they are on-call. For example, for the pay period beginning 7/29/19 and ending 8/11/19, with a pay date of 8/16/19, Mr. Solomon received a wage statement that included a \$60.00 payment for “Oc1 On Call” representing three days of on-call pay at \$20.00 per day. This on-call pay is paid in addition to non-exempt employees’ respective hourly rates of pay. Because these on-call payments are a flat-sum made on a per-day basis, they constitute a piece-rate payment, which must be included in the regular rate of pay for computing overtime. Alternatively, if the on-call payments do not constitute a piece-rate payment, then they constitute a flat-sum bonus, which also must be included in the regular rate of pay. Although Apria Healthcare pays additional overtime wages owed on other types of non-discretionary payments such as “Aw1 Driversafe Bonuses,” they do

not properly calculate overtime wages owed as a result of on-call payments and other forms of non-discretionary pay not excludable from the regular rate of pay (hereinafter referred to collectively as “Incentive Pay”). As a result of Apria Healthcare’s payment of Incentive Pay to Mr. Solomon and other aggrieved employees, Apria Healthcare miscalculated Mr. Solomon’s regular rate of pay, resulting in a systematic underpayment of overtime wages when Mr. Solomon worked overtime hours during the same time period for which the Incentive Pay was earned.

Due to Apria Healthcare’s failure to pay Mr. Solomon and other aggrieved employees’ all overtime wages, Apria Healthcare also maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Solomon and other aggrieved employees. Additionally, Apria Healthcare issued facially defective wage statements to Mr. Solomon and other aggrieved employees when they earned shift-differentials, as the wage statements list the incorrect rates of pay. For example, for the pay period beginning 7/29/19 and ending 8/11/19, with a pay date of 8/16/19, Mr. Solomon received a wage statement that included a two different shift differentials, one for an additional 7% on top of his base rate of \$16.32, and the other for an additional 10% on top of his base rate of \$16.32. When Mr. Solomon worked regular, overtime, or double time hours while he was earnings any of these shift differentials, Apria Healthcare reported the shift differential pay on separate line items on his wage statement. For example, on the wage statement referenced in this paragraph, Mr. Solomon worked 34.62 regular hours at the 7% shift differential. This means that Mr. Solomon was earning an additional \$1.1424 per hour, which resulted in him earning an additional \$39.55 for these 34.62 hours. However, instead of listing this correct rate of pay of \$1.1424 on the wage statement for these 34.62 hours, Apria Healthcare instead incorrectly list the rate of pay at \$16.3200. This same type of error (i.e., listing the incorrect rate of pay) appears for every single line entry associated with a shift differential. For example, on the wage statement referenced in this paragraph, the following line entries have \$16.32 as the associated rate of pay, which is not correct for any of them: “Sfa Ot Pls 7%”; “Sfa Ot Pls10%”; “Sfw Dt Pls10%”; “Sf1 Rg Pls 7%”; and “Sf2 Rg Pls10%.” Apria Healthcare’s failure to list the correct rates of pay for all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee violates Labor Code section 226(a)(9). Separate and distinct from the aforementioned issue described above, when Mr. Solomon and other aggrieved employees earn on-call pay, Apria Healthcare does not list the number of piece-rate units earned and any applicable piece rate on the wage statement in violation of Labor Code section 226(a)(3).

Mr. Solomon is informed and believes that Apria Healthcare continues to commit the violations described herein. As described above, Apria Healthcare committed, and continues to commit, the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 (“Wage Order 4”):

Overtime Violations

Apria Healthcare is required to compensate non-exempt employees, including Mr. Solomon and other aggrieved employees, for all overtime hours worked pursuant to

Labor Code §§ 204, 510, 558, 1194, 1198, and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday or over 40 hours in a workweek, and for the first eight (8) hours on the seventh (7th) day of work. Wage Order 4, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours on any workday and for work in excess of eight hours on the seventh consecutive day of work in the workweek.

As alleged above, Apria Healthcare has caused Mr. Solomon and other aggrieved employees to work overtime hours but has not compensated Mr. Solomon or other aggrieved employees at one and one-half times (or two times, in the case of double-time) their “regular rate” of pay for such hours.

Wage Statement Violations

Apria Healthcare was required to furnish Mr. Solomon and other aggrieved employees with accurate and itemized wage statements that included, among other requirements, all hours worked, all hours worked at each hourly rate, and all applicable hourly rates of pay. *See* Labor Code § 226(a). As a result of Apria Healthcare’s failure to pay all required overtime wages, Apria Healthcare maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Solomon and other aggrieved employees in violation of Labor Code § 226. Apria Healthcare’s failure to comply with its wage statement obligations was knowing and intentional, and Mr. Solomon and other aggrieved employees have suffered injury as a result.

As an “aggrieved employee,” Mr. Solomon will initiate a civil action on behalf of himself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Solomon’s own investigation, and on information and belief, Apria Healthcare committed and continues to commit the following Labor Code violations:

- a. Apria Healthcare has violated Labor Code §§ 204, 510, 558, 1194, 1198, and 1815 by failing to pay Mr. Solomon and other aggrieved employees all overtime and/or double-time compensation earned;
- b. Apria Healthcare has violated Labor Code § 226 by failing to furnish Mr. Solomon and other aggrieved employees with accurate and complete itemized wage statements;
- c. Apria Healthcare violated Labor Code § 204 by failing to pay Mr. Solomon and other aggrieved employees all wages earned at least twice during each calendar month; and
- d. Apria Healthcare violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Solomon and other aggrieved employees.

LWDA
March 27, 2020
Page 4 of 4

Pursuant to Labor Code Section § 2699.3, please notify my office and Apria Healthcare if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Apria Healthcare LLC (via certified mail)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

APRIA HEALTHCARE LLC
C/O NATIONAL REGISTERED AGENTS, INC.
818 WEST SEVENTH STREET-SUITE 930
LOS ANGELES, CA 90017



9590 9402 5296 9154 3358 37

2. Article Number (Transfer from service label)

7019 2280 0001 9441 2110

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

Tem Thongsavat

C. Date of Delivery

APR 06 2020

D. Is delivery address different from item 1?

If YES, enter delivery address below:

- ☐ Yes
- ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail Restricted Delivery (\$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation
- ☐ Signature Confirmation Restricted Delivery

U.S. Postal Service™

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$

Total

\$

Service

Street

City

APRIA HEALTHCARE LLC
C/O NATIONAL REGISTERED AGENTS, INC.
818 WEST SEVENTH STREET-SUITE 930
LOS ANGELES, CA 90017



PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7019 2280 0001 9441 2110

Domestic Return Receipt

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Alma Hernandez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Monday, March 30, 2020 10:03:17 AM

3/30/2020

LWDA Case No. LWDA-CM-780867-20
Law Firm : Haines Law Group
Plaintiff Name : Lamont Solomon
Employer: Apria Healthcare LLC

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 3

LAFFEY MATRIX

[History](#)
[Case Law](#)
[See the Matrix](#)
[Contact us](#)
[Home](#)

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT 4

Haines Law Group, APC

Expense Summary

Lamont Solomon v. Apria Healthcare LLC

EXPENSE	AMOUNT
Filing and Service Fees	\$4,009.75
Travel Costs	\$47.91
Expert Fees	\$7,295.50
Mediation Fees	\$7,000.00
Copying & Postage Costs	\$44.20
Legal Research Costs	\$48.49
TOTAL:	\$18,445.85