

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
H. Scott Leviant (SBN 200834)
scott.leviant@moonyanglaw.com
Mariam Ghazaryan (SBN 341119)
mariam.ghazaryan@moonyanglaw.com

MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff SAMANTHA JOE SERRANO

Amanda C. Sommerfeld (State Bar No. 185052)
Amanda W. Molinari (State Bar No. 323840)

JONES DAY
555 South Flower Street
Los Angeles, CA 90071-2300
Telephone: (213) 243-2357
Email: amolinari@jonesday.com
Email: asommerfeld@jonesday.com

Attorneys for Defendant HOSPITAL OF BARSTOW, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SAMANTHA JOE SERRANO, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

HOSPITAL OF BARSTOW, INC d/b/a
BARSTOW COMMUNITY HOSPITAL, a
California Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIVDS2006967

Assigned to: Hon. David Cohn, Dept. S-26

CLASS ACTION

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: March 5, 2020

Trial Date: Not Set

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT	1
DEFINITIONS	1
STIPULATED BACKGROUND.....	3
PRIMARY TERMS OF SETTLEMENT	5
THE SETTLEMENT ADMINISTRATOR’S PRIMARY DUTIES.....	16
ATTORNEY’S FEES AND COSTS	17
THE NOTICE PROCESS.....	18
DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS	19
RELEASE BY THE CLASS AND PAGA EMPLOYEES	20
DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL	22
DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL	23
NULLIFICATION AND TERMINATION	23
PARTIES’ AUTHORITY.....	24
MUTUAL FULL COOPERATION.....	24
NO PRIOR ASSIGNMENTS.....	25
NO ADMISSION OF LIABILITY	25
ENFORCEMENT ACTIONS	25
NOTICES	25
CONSTRUCTION.....	26
CAPTIONS AND INTERPRETATIONS	26
MODIFICATION.....	26
INTEGRATION CLAUSE.....	26
WAIVER OF APPEALS	26
BINDING ON ASSIGNS	27
CLASS COUNSEL SIGNATORIES.....	27

COUNTERPARTS	27
CONFIDENTIALITY & PUBLIC COMMENT	27
FINAL JUDGMENT	28

1 **JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 This Joint Stipulation of Class and Representative Action Settlement (“Joint Stipulation of
3 Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff
4 Samantha Joe Serrano, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class
5 Representative”), and Hospital of Barstow, Inc. (“Defendant”). Plaintiff and Defendant are collectively
6 referred to herein as “the Parties.”

7
8 THE PARTIES STIPULATE AND AGREE as follows:

9 **DEFINITIONS**

10 1. For purposes of this Settlement, “Complaint” refers to the Third Amended Complaint,
11 which the Parties agree shall be filed for the sole purpose of effectuating this Settlement, after the Court
12 grants Preliminary Approval of this Settlement. The Parties further stipulate that Defendant’s Answer to
13 the Second Amended Complaint shall be deemed applicable to the Third Amended Complaint, without
14 amendment, at the time the Court grants Preliminary Approval of this Settlement.

15 2. For purposes of this Settlement, this matter, entitled *Samantha Joe Serrano v. Hospital of*
16 *Barstow, Inc. d/b/a Barstow Community Hospital*, San Bernardino County Superior Court, Case No.
17 CIVDS2006967, is referred to herein as the “Action.”

18 3. For purposes of this Settlement, the “Class Period” is March 5, 2016 through the date upon
19 which the Court grants preliminary approval of this Settlement.

20 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-
21 exempt employees of Defendant who worked for Defendant in California at any time during the Class
22 Period. “Settlement Class Members” are those Class Members who do not submit timely exclusion
23 requests to the Settlement Administrator. Defendant’s best estimate is that the Class included
24 approximately 800 individuals on April 19, 2022.

25 5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

26 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
27 Class Member worked at Defendant’s locations in California during the Class Period. A workweek in
28 which the Class Member recorded any working time at all shall count as a Covered Workweek.

1 Defendant's best estimate is that the Class Members worked a total of approximately 70,000 weeks during
2 the period of March 5, 2016 through April 19, 2022.

3 7. For purposes of the Settlement, "Defendant's Counsel" means JONES DAY.

4 8. For purposes of this Settlement, "PAGA" means the Labor Code Private Attorneys
5 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

6 9. For purposes of this Settlement, "PAGA Allocation" means the portion of the Gross
7 Settlement Amount (as described in Paragraph 26.c, below) that the Parties have agreed to allocate to
8 resolution of the Released PAGA Claims. The Parties have agreed that the PAGA Allocation will be
9 \$100,000 from the Gross Settlement Amount. Pursuant to PAGA, Seventy Five Percent (75%), or
10 \$75,000, of the PAGA Allocation will be paid to the Labor and Workforce Development Agency
11 ("LWDA") ("PAGA Penalty Payment"), and Twenty Five Percent (25%), or \$25,000, of the PAGA
12 Allocation will be included in the Net Settlement Amount (as described in Paragraph 26.g, below) for
13 PAGA Employees ("PAGA Settlement Payment").

14 10. For purposes of this Settlement, "PAGA Employee" means all Class Members that worked
15 at any time during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all
16 PAGA Employees are "aggrieved employees" as defined pursuant to PAGA.

17 11. For purposes of this Settlement, "PAGA Pay Periods" means the number of pay periods
18 each PAGA Employee worked during the PAGA Period.

19 12. For purposes of this Settlement, the "PAGA Period" is March 5, 2019 through the date
20 upon which the Court grants preliminary approval of this Settlement.

21 13. For purposes of this Settlement, "PAGA Representative" means Plaintiff.

22 14. For purposes of this Settlement, "Released PAGA Claims" means all claims that have been
23 pled or could have been pled, based upon the factual allegations and issues set forth in the Notice to the
24 LWDA and alleged in the Complaint, including civil penalties under PAGA, fees, and all other claims and
25 allegations made or which could have been made in the Action based on the facts and allegations pled in
26 Plaintiff's Notice to the LWDA and the Complaint. Plaintiff's Notice to the LWDA is attached hereto as
27 **Exhibit "B."**

28 15. For purposes of this Settlement, "Response Deadline" means the date sixty (60) days after

1 the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on
2 which Settlement Class Members may submit a request for exclusion or written objection to the
3 Settlement. In the case of a re-mailed Notice, the Response Deadline will be 14 calendar days from re-
4 mailing. The Response Deadline may be extended only as expressly described herein.

5 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to
6 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to PAGA
7 Employees (the “PAGA Settlement Payment”).

8 **STIPULATED BACKGROUND**

9 17. On March 5, 2020, Plaintiff filed a putative Class Action complaint alleging the following
10 labelled causes of action: (1) Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204,
11 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
12 (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit
13 Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab.
14 Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and
15 (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the
16 complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-
17 paid, non-exempt employee at any time during the period beginning four years before the filing of the
18 initial complaint and ending when Notice to the Class is sent.

19 18. On May 20, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for
20 Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*]. On June 2, 2021, Plaintiff filed a Second
21 Amended Complaint to correct the name of the Defendant. The Parties engaged in formal and informal
22 discovery in anticipation of mediation. Based on Plaintiff’s counsel’s investigation, review of materials
23 produced by Defendant and analysis of time and pay records produced by Defendant, the Parties stipulate
24 to the filing of a Third Amended Complaint to conform to the facts and claims that were investigated,
25 negotiated and resolved during mediation.

26 19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate
27 and agree that the requisites for establishing class certification with respect to the Class Members have
28 been met and are met.

1 20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties
2 were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
3 admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be
4 certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves
5 its right to oppose claim or class certification in this or any other action should this Settlement not become
6 effective.

7 21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
8 claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this
9 lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims,
10 Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper
11 wages, have been provided meal periods, have been provided rest periods, have been paid timely wages
12 upon separation of employment, and have been provided with accurate itemized wage statements.
13 Defendant contends, among other things, that it has complied at all times with the California Labor Code
14 and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all
15 claims, Defendant contends that it has complied at all times with the California Business and Professions
16 Code.

17 22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
18 all disputes and claims arising from or related to the Complaint.

19 23. Class Counsel has conducted a thorough investigation into the facts of this Action,
20 including an extensive review of relevant documents, and has diligently pursued an investigation of the
21 claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class
22 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
23 forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the
24 Class in light of all known facts and circumstances, including the risk of significant delay, the risk the
25 Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate
26 issues. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best interest of
27 the Class.

28 24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain

1 preliminary and final approval of this Settlement.

2 25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary
3 to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the
4 Court.

5 **PRIMARY TERMS OF SETTLEMENT**

6 26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements
7 set forth herein, the Parties agree, subject to the Court's approval, as follows:

- 8 (a) It is agreed by and among Plaintiff, the Settlement Class Members, PAGA
9 Employees, and Defendant that this case and any claims, damages, or causes of
10 action arising out of the disputes which are the subject of this case, be settled and
11 compromised as between Plaintiff, the Settlement Class Members, PAGA
12 Employees, and Defendant, subject to the terms and conditions set forth in this
13 Settlement and the approval of the Court.
- 14 (b) Effective Date: The terms of settlement embodied in this Settlement shall become
15 effective when all of the following events have occurred: (i) this Joint Stipulation
16 of Settlement has been executed by all Parties and their respective counsel; (ii) the
17 Court has given preliminary approval to the Settlement; (iii) the Notice has been
18 given to the Class, providing them with an opportunity to dispute information
19 contained in the Notice, to opt out of the Settlement, or to object to the Settlement;
20 (iv) the Court has held a final approval hearing and entered a final order and
21 judgment certifying the Class and approving this Settlement; and (v) the later of the
22 following events: (a) seven calendar days have passed since final approval is
23 granted if there are no objections to the settlement; (b) 65 days following notice of
24 entry of the Court's final order approving the Settlement if there are any objections
25 by any Class Member; (c) or if any appeal, writ or other appellate proceeding
26 opposing this Settlement has been filed within 65 days following notice of entry of
27 the Court's final order approving the Settlement, then 21 days after when any
28 appeal, writ or other appellate proceeding opposing the Settlement has been

resolved finally and conclusively with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court's order approving the Settlement is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Settlement.

(c) Gross Settlement Amount: Defendant's maximum total payment under the Settlement, including all attorney's fees and costs, the Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is \$2,000,000.00 ("Gross Settlement Amount"), subject to the Escalator Clause and except that, to the extent that any portions of the Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.

(d) Escalator Clause: The number of Covered Workweeks is estimated to be 70,000. If it is later determined that, on the date of preliminary approval, the number of actual Covered Workweeks during the Class Period exceeds 10% of the estimated Covered Workweeks (i.e., exceeds 77,000 workweeks), Defendant may elect to either (a) increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of workweeks in excess of 77,000 workweeks; or (b) end the Class Period on the date the number of pay periods first exceeds 77,000 (the "Escalator Clause"). The Gross Settlement Amount will not be reduced for any reason.

(e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.

(f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.

(g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$2,000,000) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the

Gross Settlement Amount, or \$666,667.00); (2) reasonable litigation costs (not to exceed \$20,000.00); (3) the Service Payment (not to exceed \$10,000.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$75,000.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$30,000). Settlement Payments to the Class Members will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes, it is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

(i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount (less the PAGA Settlement Payments totalling \$25,000.00), as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows:
$$\left[\frac{\text{Workweeks worked by a Settlement Class Member}}{\text{Sum of all Covered Workweeks worked by all Settlement Class Members}} \right] \times [\text{Net Settlement Amount} - \text{all PAGA Settlement Payments}] =$$

individual Settlement Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: $[PAGA \text{ Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}] \times [PAGA \text{ Settlement Payment of } \$25,000.00] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment}$. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 40% to wages, 30% to penalties and 30% to interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment.

1 The employer's share of payroll taxes and other required withholdings will be paid
2 as set forth above, including but not limited to the Defendant's FICA and FUTA
3 contributions, based on the payment of claims to the Class Members. Class
4 Members are responsible to pay appropriate taxes due on the Settlement Payments
5 they receive. The Settlement Administrator will issue to each Settlement Class
6 Member an Internal Revenue Service Form W-2 and comparable state forms with
7 respect to the wage allocation and a Form 1099 with respect to the penalties and
8 interest allocations, to the extent required by law.

9 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
10 Payments to individual Class Members shall be deemed to be paid to such Class
11 Member solely in the year in which such payments actually are received by the
12 Class Member. It is expressly understood and agreed that the receipt of such
13 Settlement Payments will not entitle any Class Member to additional compensation
14 or benefits under any company bonus, contest or other compensation or benefit
15 plan or agreement in place during the period covered by the Settlement, nor will it
16 entitle any Class Member to any increased retirement, 401(k) benefits or matching
17 benefits or deferred compensation benefits. It is the intent that the Settlement
18 Payments provided for in this Settlement are the sole payments to be made by
19 Defendant to the Class Members, and that the Class Members are not entitled to
20 any new or additional compensation or benefits as a result of having received the
21 Settlement Payments (notwithstanding any contrary language or agreement in any
22 benefit or compensation plan document that might have been in effect during the
23 period covered by this Settlement).

24 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
25 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of
26 the Gross Settlement Amount (\$666,667.00) and reimbursement of litigation costs
27 and expenses not to exceed \$20,000.00. Approved attorney's fees and litigation
28 costs shall be paid at the same time Settlement Payments issue to the Settlement

1 Class. Should the Court approve attorney's fees and costs in an amount less than
2 that set forth above, the difference between the lesser amount(s) approved by the
3 Court and the attorney's fees and costs set forth above shall be added to the Net
4 Settlement Amount.

- 5 (n) General Release and Service Payment: Subject to Court approval, and in exchange
6 for a general release, Defendant will not object to Class Counsel's application for
7 an additional payment of up to \$10,000.00 to Plaintiff as consideration for a
8 general release of all claims and as a payment for service as a Class Representative
9 ("Service Payment"). It is understood that the Service Payment is in addition to the
10 individual Settlement Payment to which a Class Representative is entitled to along
11 with the other Class Members. In exchange, Plaintiff has agreed to release all
12 claims, whether known or unknown, under federal law or state law against the
13 Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's
14 Released Claims"). Plaintiff understands that this release includes unknown claims
15 and that Plaintiff is, as a result, waiving all rights and benefits afforded by Civil
16 Code § 1542, which provides:

17 **A GENERAL RELEASE DOES NOT EXTEND TO**
18 **CLAIMS THAT THE CREDITOR OR RELEASING**
19 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**
20 **HIS OR HER FAVOR AT THE TIME OF EXECUTING**
21 **THE RELEASE AND THAT, IF KNOWN BY HIM OR**
22 **HER, WOULD HAVE MATERIALLY AFFECTED HIS**
23 **OR HER SETTLEMENT WITH THE DEBTOR OR**
24 **RELEASED PARTY.**

25 Specifically excluded from Plaintiff's Released Claims are any claims for
26 workers' compensation benefits. The Service Payment will issue at the same
27 time all Settlement Payments are mailed to the Settlement Class.

- 28 (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the
Service Payment to the Plaintiff. The Plaintiff will be individually responsible for
correctly characterizing this compensation on personal income tax returns for tax
purposes and for paying any taxes on the amounts received. Should the Court

1 approve a Service Payment in an amount less than that set forth above, the
2 difference between the lesser amount(s) approved by the Court and the Service
3 Payment amount(s) set forth above shall be added to the Net Settlement Amount.
4 Plaintiff agrees not to opt out or object to the Service Payment as the Class
5 Representative.

6 (p) Settlement Administrator: The Settlement Administrator will be ILYM Group,
7 Inc., or such Settlement Administrator as may be mutually agreeable to the Parties
8 and approved by the Court. The Parties agree that Settlement Administration Costs
9 should not reasonably exceed \$30,000.00, and the Settlement Administrator's bid
10 for settlement administration services in the amount of \$16,700.00 was selected for
11 the reasonable price and the quality of administration services provided by ILYM
12 Group, Inc. The costs of the Settlement Administrator for work done shall be paid
13 regardless of the outcome of this Settlement.

14 (q) Funding of Settlement Account: Defendant will fund the settlement account with
15 the Gross Settlement Amount and all employer related payroll taxes on the later of
16 January 6, 2023, or 14 calendar days after the Effective Date of the Settlement,
17 provided that the Settlement Administrator has provided the Parties with an
18 accounting of the amounts to be paid by Defendant pursuant to the terms of this
19 Settlement.

20 (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the
21 Settlement Payments to be mailed to the Class Members within 14 calendar days of
22 funding of the Settlement.

23 (s) Notice of Settlement: Within 21 calendar days of the Court's preliminary approval
24 of the Settlement, Defendant will provide to the Settlement Administrator a list in
25 Microsoft Excel format containing each Class Member's (i) full name, (ii) last
26 known address, (iii) Social Security Number, and (iv) the total number of Covered
27 Workweeks for each Class Member during the Class Period ("Class List"). Within
28 fourteen (14) calendar days of receipt of the Class List, the Settlement

1 Administrator will perform an NCOA check and will mail the notice to the Class
2 Members setting forth the material terms of the proposed Settlement, along with
3 instructions about how to object or request exclusion from the proposed class
4 action Settlement (“Class Notice”). The Administrator will skip-trace returned mail
5 and re-mail the notice to the new addresses within five calendar days. These
6 deadlines are subject to court approval. For each Class Member, there will be pre-
7 printed information on the mailed Class Notice, based on Defendant’s records,
8 stating the Class Member’s Covered Workweeks during the Class Period and the
9 estimated total Settlement Payment under the Settlement, including the Settlement
10 Class Payment and the PAGA Settlement Payment that will be distributed
11 irrespective of any exclusion request. The pre-printed information based on
12 Defendant’s records shall be presumed to be correct. A Class Member may
13 dispute the pre-printed information on the Notice as to his or her Covered
14 Workweeks during the Class Period. Class Members must submit any dispute
15 regarding the information on the Class Notice to the Settlement Administrator as to
16 his or her Covered Workweeks within the Response Deadline. Unless a disputing
17 Class Member submits documentary evidence in support of his or her dispute, the
18 records of Defendant will be dispositive.

19 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

20 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

21 Class Members submitting a Request for Exclusion will nevertheless receive their
22 pro-rata share of the PAGA Settlement Payment. If the Court approves the
23 compromise of the PAGA Claim, all Class Members are bound by the Court’s
24 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
25 California Labor and Workforce Development Agency at or before the time
26 Plaintiff files the motion for preliminary approval.

27 (v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of
28 Defendant’s records used to calculate Covered Workweeks, and the Parties’

counsel cannot resolve the dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records and any information or documents submitted by the Class Member and issue a final decision regarding the dispute. Information or documents submitted after the expiration of the Response Deadline will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties. In the event that the number of Covered Workweeks is increased for any Class Member, then the Settlement Administrator will recalculate the Individual Settlement Payments accordingly; in no event will Defendant be required to increase the Gross Settlement Amount except for as set forth in the Escalator Clause.

(w) Right of Class Member to Request Exclusion from the Settlement: Any Class Member may request to be excluded from the Class by mailing a "Request for Exclusion" from the Settlement within the Response Deadline. A Request for Exclusion must clearly and unequivocally state a desire to be excluded from the Class, with a statement comparable to the following:

"I WANT TO BE EXCLUDED FROM THE CLASS IN THE
SERRANO v. HOSPITAL OF BARSTOW, INC., SAN
BERNARDINO COUNTY SUPERIOR COURT CASE NO.
CIVDS2006967."

No specific wording is required to state a Request for Exclusion, so long as it is clear and unequivocal. Any Request for Exclusion must include the name, address, telephone number, last four digits of the Class Member's Social Security Number, and the signature of the Class Member requesting exclusion to protect against falsified Requests for Exclusion. Any such request must be made in accordance with the terms of the Class Notice, and the Class Notice will advise Class Members of these requirements. Any Class Member who timely requests exclusion in compliance with these requirements (i) shall not have any rights under this Settlement other than a right to receive a pro-rata share of the portion of the PAGA payment allocated to the Class Members if the Class Member is

also PAGA Employee; (ii) shall not be entitled to receive any Settlement Payments under this Settlement other than as stated in (i) in this paragraph; and (iii) shall not be bound by this Settlement or the Court's Order and Final Judgment other than as it applies to the PAGA Claim.

(x) Right of Settlement Class Member to Object to The Settlement: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear in person (including through an audio or video call appearance via Court Call or similar service) at the Final Approval Hearing to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator. If any Class Member chooses to submit a written objection, the written objection should contain sufficient information to confirm the identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within the Response Deadline to permit adequate time for processing and review by the Parties of the written statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by file a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663 to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not

1 formally intervene in the action or move to set aside any judgment and/or the Court
2 rejects the Class Member's objection, the Class Member will still be bound by the
3 terms of this Agreement. Class Counsel and Defendants' Counsel may file
4 responses to any written objections submitted to the Court.

5 (y) Opt-in to Release Under Fair Labor Standards Act: Settlement Class Members will
6 be advised that they will opt in to a settlement of claims for unpaid compensation
7 under the Fair Labor Standards Act ("FLSA") by cashing or otherwise depositing
8 the check for their Settlement Class Payment. This will be set forth in the Class
9 Notice.

10 (z) Tax Liability: Class Counsel and Defendant make no representations as to the tax
11 treatment or legal effect of payments called for hereunder, and Plaintiff and the
12 Settlement Class Members are not relying on any statement or representation by
13 Class Counsel or Defendant in this regard. Plaintiff and Settlement Class Members
14 understand and agree that they will be solely responsible for the payment of any
15 taxes and penalties assessed on their respective payments described herein. The
16 amount of federal income tax withholding will be based upon a flat withholding
17 rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-
18 1(a)(2) as amended or supplemented. Income tax withholding will also be made
19 pursuant to applicable state and/or local withholding codes or regulations. Forms
20 W-2 and/or Forms 1099 will be distributed at times and in the manner required by
21 the Internal Revenue Code of 1986 (the "Code") and consistent with this
22 Agreement. If the Code, the regulations promulgated thereunder, or other
23 applicable tax law, is changed after the date of this Agreement, the processes set
24 forth in this Section may be modified in a manner to bring Defendant into
25 compliance with any such changes.

26 (aa) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
27 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
28 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE

1 ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES
2 AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
3 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG
4 THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
5 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
6 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
7 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
8 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
9 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
10 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL
11 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
12 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
13 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
14 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
15 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
16 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER
17 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
18 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY
19 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
20 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S
21 OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
22 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
23 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
24 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
25 CONTEMPLATED BY THIS AGREEMENT.

26 **THE SETTLEMENT ADMINISTRATOR’S PRIMARY DUTIES**

27 27. Subject to the Court’s approval, and subject to reconsideration by the Parties after a
28 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform

1 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice,
2 both in English and Spanish, to the Class Members.

3 28. The Settlement Administrator will independently review the Covered Workweeks and
4 PAGA Pay Periods attributed to each Class Member and will calculate the estimated amounts due to each
5 Class Member and the actual amounts due to each Settlement Class Member and PAGA Employee in
6 accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form,
7 the substance of its findings. The Settlement Administrator shall be granted reasonable access to
8 Defendant's records in order to perform its duties.

9 29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
10 Amount from Defendants, the Settlement Administrator will issue and send out the Settlement Payment
11 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
12 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
13 performance of its duties shall be referred to the Court, if necessary, which will have continuing
14 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
15 contemplated by this Settlement have been fully carried out.

16 30. The Settlement Administrator will post the final judgment approving the Settlement on a
17 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the
18 final judgment is entered. The website will use a page on the Settlement Administrator's website, and not
19 a custom domain for this Settlement. The address of that website will be included in the Class Notice.

20 **ATTORNEY'S FEES AND COSTS**

21 31. In consideration for resolving this matter and in exchange for the release of all claims by
22 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
23 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount
24 (\$666,667.00 of \$2,000,000.00) and litigation costs not to exceed \$20,000.00. The amounts set forth
25 above will cover all work performed and all fees and costs incurred to date, and all work to be performed
26 and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and
27 administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve
28 a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s)

1 and the maximum amount set forth above shall be added to the Net Settlement Amount. As with the
2 Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be
3 paid to Class Counsel, within 14 calendar days of the funding of the Settlement. Class Counsel shall
4 disclose to the Court any fee sharing agreements in existence. In the event that the Court awards less than
5 25% of the Gross Settlement Amount for attorney's fees, Class Counsel shall retain the right to appeal that
6 portion of any Final Approval Order and Judgment.

7 **THE NOTICE PROCESS**

8 32. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the
9 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. If required
10 under this Agreement, the Notice shall be translated into Spanish so that Spanish and English language
11 versions of the Notice are included in the mailing. Any returned envelopes from this mailing with
12 forwarding addresses will be utilized by the Settlement Administrator to forward the Notices to the Class.

- 13 (a) Within 21 calendar days from the date of preliminary approval of this Settlement
14 by the Court, Defendant shall provide to the Settlement Administrator a class
15 database containing the following information for each Class Member a list in
16 Microsoft Excel format (or other format acceptable to the Settlement
17 Administrator) containing each Settlement Class Member's (1) full name, (2) last
18 known address, (3) Social Security Number, and (4) the total number of Covered
19 Workweeks for each Class Member in California during the Class Period as a non-
20 exempt employee ("Class List"). This database shall be based on Defendant's
21 payroll and other business records. The Settlement Administrator will run a check
22 of the Class Members' addresses against those on file with the U.S. Postal
23 Service's National Change of Address List; this check will be performed only once
24 per Class Member by the Settlement Administrator. Absent mutual written
25 agreement of counsel for the Parties or Court order, the Settlement Administrator
26 will keep this database confidential and secure and use it only for the purposes
27 described herein, and will return this database to Defendant upon final approval of
28 the settlement or destroy electronic records containing the database after the

1 Settlement is final and all payments are distributed as required under this
2 Agreement. However, Plaintiff's Counsel shall be entitled to review anonymized
3 data showing the workweeks worked by each Class Member, with Class Member
4 identity concealed through use of an employee number or number assigned by the
5 Settlement Administrator.

6 (b) Within 14 calendar days after the Class database is provided to the Settlement
7 Administrator, the Settlement Administrator will mail the Notices to the Class
8 Members by First Class United States mail.

9 (c) Class Notices returned to the Settlement Administrator as non-deliverable on or
10 before the initial Response Deadline shall be resent to the forwarding address, if
11 any, on the returned envelope. A returned Class Notice will be forwarded by the
12 Settlement Administrator any time that a forwarding address is provided with the
13 returned mail. If there is no forwarding address, the Settlement Administrator will
14 do a computer search for a new address using the Class Member's social security
15 number and/or other information. In any instance where a Class Notice is re-
16 mailed, that Class Member will have until the extended Response Deadline as
17 described above. A letter prepared by the Settlement Administrator will be
18 included in the re-mailed Class Notice in that instance, stating the extended
19 Response Deadline if different than the original Response Deadline. Upon
20 completion of these steps by the Settlement Administrator, Defendant and the
21 Settlement Administrator shall be deemed to have satisfied their obligations to
22 provide the Class Notice to the affected Class Member. The affected Class
23 Member shall remain a member of the Settlement Class and shall be bound by all
24 the terms of the Settlement and the Court's Order and Final Judgment.

25 (d) Class Counsel shall provide to the Court a declaration by the Settlement
26 Administrator of due diligence and confirming mailing of the Notices.

27 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

28 33. As set forth above, each Class Member will have until the expiration of the applicable

1 Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class
2 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
3 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
4 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
5 Administrator and a record of proof of mailing.

6 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
7 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
8 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and
9 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
10 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
11 within that time, and the Class Member's relevant claims will remain released by the Settlement.
12 Settlement Payment checks which have expired will not be reissued.

13 35. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void
14 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
15 each Class Member who failed to cash their Settlement Payment check prior to the void date.

16 36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
17 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
18 be made to Class Members (to be identified anonymously by employee number or other identifier). A
19 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
20 Defendant's Counsel and filed with the Court by Class Counsel.

21 **RELEASE BY THE CLASS AND PAGA EMPLOYEES**

22 37. Upon the final approval by the Court of this Settlement and Defendant's payment of all
23 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
24 Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid
25 and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee,
26 regardless of whether they have requested exclusion from the Settlement of Class claims, will release
27 claims as follows:

28 (a) **Identity of Released Parties.** The released parties are Defendant and its former

1 and present employees, directors, shareholders, officers, owners, attorneys, agents,
2 insurers, agents, successors, assigns, parents, subsidiaries, affiliates, or legal
3 representatives and any individual or entity which could be jointly liable with
4 Defendant and all persons or entities acting by, through, under, or in concert with
5 any of them (collectively “Releasees” or “Released Parties”).

6 (b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims
7 will be released upon the later of (1) the Settlement’s Effective Date, or (2) the
8 satisfaction of Defendant’s obligation to provide to the Settlement Administrator a
9 sum in the amount required to satisfy all required payments and distributions
10 pursuant to this Settlement and the Order and Judgment of final approval. Class
11 Members will not release the Released Claims or Released PAGA Claims until
12 both the Effective Date of the Settlement has occurred, **and** Defendant has paid all
13 amounts owing under the Settlement.

14 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
15 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
16 submitted a timely and valid Request for Exclusion (which will not effectuate an
17 opt-out from the release of Released PAGA Claims), hereby releases Releasees
18 from the following claims for the entire Class Period:

19 1) any and all claims, rights, demands, liabilities, and causes of action of any
20 kind, whether known or unknown, arising from the alleged violation of any
21 provision of common law, California law and/or federal law which was or
22 could have been raised in Plaintiff’s operative complaint, including claims
23 based on California Labor Code sections 201, 202, 203, 204, 206.5, 218.5,
24 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2698 *et*
25 *seq.*, California Code of Regulations, Title 8 Section 11000 *et seq.*, the
26 applicable Industrial Welfare Commission (IWC) Wage Orders, Business
27 & Professions Code sections 17200–17208 or any related damages,
28 penalties, restitution, disgorgement, interest or attorneys’ fees, and that

arose on or before the final day of the Class Period (“Released Claims”);

- 2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,

- (d) **Claims Released by the Class, Including PAGA Employees.** All PAGA Employees employed during the Released PAGA Claims Period (whether requesting exclusion from the Settlement or not) will release the Released PAGA Claims (*see* Paragraph 15, above).

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

38. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff’s unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney’s fees and costs, and the Class Representatives’ service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

1 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

2 39. In conjunction with the hearing of a motion for final approval by the Court of the
3 Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's
4 Counsel for review and approval and then submit to the Court a proposed final order and judgment
5 containing provisions sufficient to accomplish the following:

- 6 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
7 adequate, and directing consummation of its terms and provisions;
8 (b) Approving Class Counsel's application for an award of attorney's fees and costs;
9 (c) Approving the Settlement Administration Costs;
10 (d) Approving the Service Payment to the Class Representative;
11 (e) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting
12 duties under the Settlement.
13 (f) Adjudging Plaintiff and Class Counsel may adequately represent the Final
14 Settlement Class for the purpose of entering into and implementing the Agreement;
15 (g) Entering a final judgment in the action;
16 (h) Adjudging that notwithstanding the submission of a timely request for exclusion,
17 Class Members are still bound by the settlement and release of the Released PAGA
18 Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46
19 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to
20 the Released PAGA Claims, and further affirms that the State's claims for civil
21 penalties pursuant to PAGA are also extinguished;
22 (i) Directing the posting of the final judgment on a website maintained by the
23 Settlement Administrator for a period of not less than 90 calendar days after entry
24 of final judgment.

25 Any revised final judgments will also be provided to Defendant's Counsel for review and approval
26 before they are submitted to the Court.

27 **NULLIFICATION AND TERMINATION**

28 40. This Settlement will be null and void if any of the following occur: (a) the Court should for

1 any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to
2 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
3 adjustments made to the attorney's fees and costs or granting of Service Payments; or (c) a final judgment
4 is reversed, modified, or voided.

5 41. If 5% or more of the Class Members opt out of this Settlement, then Defendant in its sole
6 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
7 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
8 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
9 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 14 days
10 after receiving notice that 5% or more of the Class Members have opted out of this Settlement. If this
11 option is exercised by Defendant, Defendant shall be solely responsible for the costs incurred by the
12 Settlement Administrator for the settlement administration.

13 42. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
14 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
15 proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all
16 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
17 neither entered into nor filed with the Court.

18 **PARTIES' AUTHORITY**

19 43. The signatories hereto hereby represent that they are fully authorized to enter into this
20 Settlement and bind the Parties hereto to the terms and conditions thereof.

21 **MUTUAL FULL COOPERATION**

22 44. The Parties agree to fully cooperate with each other to accomplish the terms of this
23 Settlement including, but not limited to, execution of such documents and taking such other action as
24 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
25 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
26 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
27 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
28 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the

1 Court's preliminary and final approval of this Settlement.

2 **NO PRIOR ASSIGNMENTS**

3 45. The Parties and their respective counsel represent, covenant, and warrant that they have not
4 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
5 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
6 released and discharged except as set forth herein.

7 **NO ADMISSION OF LIABILITY**

8 46. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
9 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
10 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
11 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
12 attendant inconvenience and expenses.

13 **ENFORCEMENT ACTIONS**

14 47. In the event that one or more of the Parties to this Settlement institutes any legal action or
15 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
16 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
17 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
18 incurred in connection with any enforcement actions.

19 **NOTICES**

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

24 ///

Class Counsel:

Kane Moon
H. Scott Leviant
Mariam Ghazaryan
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
scott.leviant@moonyanglaw.com
mariam.ghazaryan@moonyanglaw.com

Counsel for Defendant:

Amanda C. Sommerfeld
Amanda W. Molinari
JONES DAY
555 South Flower Street
Los Angeles, CA 90071-2300
Telephone: (213) 243-2357
Email: amolinari@jonesday.com
Email: asommerfeld@jonesday.com

CONSTRUCTION

49. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

50. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

MODIFICATION

51. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

52. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

53. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the

1 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
2 Gross Settlement Amount as attorney's fees.

3 **BINDING ON ASSIGNS**

4 54. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
5 their respective heirs, trustees, executors, administrators, successors and assigns.

6 **CLASS COUNSEL SIGNATORIES**

7 55. It is agreed that because the members of the Class are so numerous, it is impossible or
8 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
9 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
10 have the same force and effect as if this Settlement were executed by each member of the Class.

11 **COUNTERPARTS**

12 56. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
13 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
14 deemed an original, and, when taken together with other signed counterparts, shall constitute one
15 Settlement, which shall be binding upon and effective as to all Parties.

16 **CONFIDENTIALITY & PUBLIC COMMENT**

17 57. The Class Representative and Class Counsel agree they will not make any disparaging
18 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of
19 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record
20 other than to Class Members, who may receive information about the Settlement that is not in the public
21 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as
22 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of
23 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no
24 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To
25 the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a
26 statement that a matter was settled between a putative class and a "healthcare business." Any
27 communication about the Settlement to Class Members prior to the Court-approved mailing will be
28 limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that

would necessarily be included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating about the terms or the fact of the settlement on any form of social media ("Social Media Bar"). Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

58. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

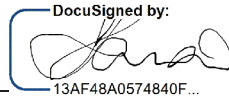
IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: June 24, 2022

By: _____

DocuSigned by:

13AF48A0574840F...

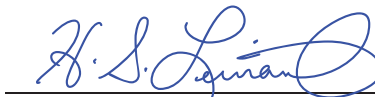
Samantha Joe Serrano

Plaintiff's Counsel:

Dated: June 25, 2022

MOON & YANG, APC

By: _____


Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

1 **Defendant:**

2 Dated: June 27, 2022

Hospital of Barstow, Inc.

3
4 By: Donald R. Espusilo Jr.
Print Name

5
6 Donald R. Espusilo Jr.
Signature

7
8 Sr. Vice President & Secretary
Title

9
10 **Defendant's Counsel:**

11 Dated: June __, 2022

JONES DAY

12
13 By: _____
Amanda C. Sommerfeld
Amanda W. Molinari

14
15 Attorneys for Defendant Hospital of Barstow, Inc.

1 Defendant:

2 Dated: June , 2022

Hospital of Barstow, Inc.

3
4 By: _____

Print Name

5
6 _____
Signature

7
8 _____
Title

9
10 Defendant's Counsel:

11 Dated: July 5, 2022

JONES DAY

12
13 By: 

Amanda C. Sommerfeld
Amanda W. Molinari

14
15 Attorneys for Defendant Hospital of Barstow, Inc.
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit “A”

As a current or former Employee of Hospital of Barstow, Inc.
between March 5, 2016 and [PRELIM APPROVAL DATE], your rights
may be affected by a settlement in a class action lawsuit.

A court authorized this Notice. This is not a solicitation from a lawyer.

- A former employee named Samantha Joe Serrano (“Plaintiff”) filed a lawsuit against Hospital of Barstow, Inc. (“Barstow”) asserting that she was not provided with all minimum and overtime wages, the meal and rest breaks required by California law, and did not receive wage statements that complied with California law. In her lawsuit, Plaintiff sought to recover certain wages and penalties for herself, and on behalf of all nonexempt employees who were employed by Barstow in California during the class period (March 5, 2016-[DATE OF PRELIM APPROVAL]) (“Class Members”). She also sought to recover penalties under the California Private Attorneys General Act (PAGA) on behalf of all nonexempt employees who were employed by Barstow during the PAGA period (March 5, 2019-[DATE OF PRELIM APPROVAL]) (“Aggrieved Employees”).
- Barstow denies that it has done anything unlawful and believes that its meal and rest break policies complied with the law, provided compliant wage statements, and that it paid all wages and overtime. The court has not decided which side is right.
- A settlement totaling \$2 million dollars has been agreed to in this class action lawsuit. You may be part of this class action and entitled to compensation from the settlement if you were a Nonexempt Employee with Barstow in California between March 5, 2016 and [PRELIM APPROVAL DATE] (“Class Period”). Your rights are affected by this settlement, and you have a choice to make now.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:	
DO NOTHING	<p>Stay in this lawsuit and obtain your share of the settlement money. Give up certain rights.</p> <p>If you do nothing, you will automatically continue to be included in the case and represented by Class Counsel and the Plaintiff. Your decision will be final and binding, and you will not be able to change your mind later and request exclusion. You will obtain your share of settlement money if the Court gives final approval to the Settlement. You will also not be able to bring a separate action regarding the claims in this lawsuit.</p>
ASK TO BE EXCLUDED	<p>Get out of this lawsuit and maintain your right to represent your own interests. Do not obtain your share of any settlement money.</p> <p>You may choose to exclude yourself from the case. This means that you will be withdrawing your right to participate in this lawsuit and you will keep the right to sue Barstow and represent your own interests. Your decision will be final and binding, and you will not be able to change your mind later. You will not receive any money if the Court approves the settlement, and you will not be releasing any claims you may have. To ask to be excluded, you must act by Month XX, 2023.</p>
OBJECT, COMMENT, OR SUPPORT THE SETTLEMENT	<p>You may object to the settlement in writing to tell the Court why you do not like the settlement. You may also write to the Court to tell the Court if you like the settlement. You must do so by Month XX, 2023.</p>
COME TO THE SETTLEMENT FAIRNESS HEARING	<p>The Court will hold a Settlement Fairness Hearing on [DATE] at [TIME]. At the hearing the Court will determine whether to approve the settlement and whether to award Class Counsel any requested attorneys’ fees and costs.</p>

QUESTIONS? CALL [INSERT NUMBER] TOLL FREE OR VISIT [INSERT WEBSITE]

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE

BASIC INFORMATION

1. Why was this notice issued?

This notice was issued because a class and representative action settlement has been reached in this lawsuit and your rights may be affected. If you were a Class Member or Aggrieved Employee with Barstow in California between March 5, 2016 and [PRELIM APPROVAL], you may have legal rights and options in this case before the judge or a jury deciding the claims being made against Barstow.

Judge David Cohn of the San Bernardino County Superior Court is overseeing this class and representative action. The case is known as *Serrano v. Hospital of Barstow, Inc. d/b/a Barstow Community Hospital*, Case No. CIVDS2006967. The person who sued is called the Plaintiff. The company she sued, Hospital of Barstow, Inc. is called the Defendant or Barstow.

2. What is a class action?

In a class and representative action, one or more people, called Class Representatives (in this case Samantha Joe Serrano), sue on behalf of all people who have similar claims. Together, these people are called a Class or Class members. One court resolves the issues for all Class members, except for those who exclude themselves from the Class. The Court has given preliminary approval to inform you about this settlement, but the Court has not decided whether or not the claims have merit. More information about why this is a class action can be found at [insert website].

THE CLAIMS IN THE LAWSUIT

3. What is the lawsuit about?

Plaintiff claims that Barstow's minimum wage, overtime, meal and rest break, and wage statement policies and practices violated California law. The lawsuit claims that, as a result of these violations, Barstow owes additional wages and monetary penalties. Specifically, the Plaintiff claims that Barstow violated the California Labor Code, the Private Attorneys General Act ("PAGA") and California's Unfair Competition Law. More information can be found in the Complaint, available at [insert website].

4. How does Barstow respond to the claims?

Barstow denies that it has done anything wrong and contends that its policies were proper, in that its employees were paid all minimum and overtime wages, provided with compliant wage statements, and provided at least a 10 or 15-minute rest break for every 3.5 hours worked and were given a reasonable opportunity to take at least one uninterrupted off-the-clock 30-minute meal break for every 5 hours worked, unless waived by the employee. Barstow also contends that some of the penalties sought by Plaintiff for meal or rest break violations are not permitted by law.

5. Has the Court decided who is right?

No. The Court has not ruled on the merits of the claims. The Parties have reached a settlement of the case instead of going to trial.

THE SETTLEMENT OF THE LAWSUIT

6. What is the settlement?

Rather than go to trial, the Parties have agreed that Barstow will pay a total of \$2 million dollars (or \$2,000,000) to Class Members and Aggrieved Employees in California who worked during the class and PAGA period.

QUESTIONS? CALL [INSERT NUMBER] TOLL FREE OR VISIT [INSERT WEBSITE]

Although Barstow has agreed to a settlement, Barstow denies that it violated any laws or that it owes Class Members and Aggrieved Employees any unpaid wages or penalties.

The \$2 million settlement includes a settlement payment to each eligible Class Member and Aggrieved Employee as well as: (1) a "PAGA" payment of \$75,000 to the state of California's Labor Workforce Development Agency; (2) estimated settlement administration costs in the amount of \$30,000; (3) potential payment of \$10,000 to the Class Representative for her time and efforts pursuing this lawsuit; (4) costs of the litigation up to the amount of \$20,000; and (5) payment of Class Counsel's attorneys' fees up to \$666,667.00 (or 33% of the settlement). The Court will determine whether to make these payments and in which amounts at the Settlement Fairness Hearing.

7. How will the settlement be distributed?

The settlement will be divided among Class Members depending on how many weeks (called "workweeks" in the settlement) they worked for Barstow between March 5, 2016 and [PRELIM APPROVAL]. The more weeks worked during this period, the greater your settlement payment will be. Class Members who worked for Barstow between March 5, 2019 and [PRELIM APPROVAL] will also receive a share of \$25,000 allocated as part of the settlement of the PAGA claim in this action. If the Court awards Class Counsel their attorneys' fees and reimbursements for the costs and expenses of the litigation and administering the settlement, those amounts will be also deducted from the settlement fund as well.

8. How much will my settlement share be?

Barstow's records indicate that you worked [#####] workweeks during the Class Period. Based on this information and the anticipated payment of Class Counsel's attorneys' fees and expenses, we estimate that your settlement share will be \$[#####] before taxes and other withholdings. Please remember that this is an estimate and that you may receive more or less than this amount. If you believe the number of workweeks worked by you and stated above is incorrect, please contact the Settlement Administrator or call [INSERT NUMBER]. Any disputes over the numbers of weeks worked will be decided by the Settlement Administrator, subject to final approval by the Court. If you exclude yourself from the lawsuit, you will not receive a settlement share.

Forty percent (40%) of your class action settlement payment will be attributed to wages and will be reported as such on an IRS Form W-2 from which payroll withholding taxes and contributions shall be taken and (60%) will be attributed to interest and penalties and will be reported on an IRS Form 1099. One hundred percent (100%) of any PAGA Settlement Payment you receive will be attributed to penalties and will be reported on an IRS Form 1099. You will have to determine all tax implications of your settlement share. The Parties agree that anyone who receives any payment pursuant to the settlement will be responsible for any and all tax obligations associated with such receipt. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive.**

9. If I stay in the class when will I get my settlement money?

If the Settlement is approved, settlement payments will be mailed out in a few months. However, sometimes settlements payments take longer, particularly if there are any appeals of the Court's approval of the Settlement. Please be patient. If you move before you receive your settlement payment, please make sure to provide your new address to the Settlement Administrator [INSERT NUMBER].

10. Why does the Class Representative get additional money?

In class and representative actions such as this one, a court may provide the Class Representative additional money in recognition of the time, effort and risks the Class Representative took to prosecute the class and representative action and the Class Representative's execution of a general release of all claims. This is sometimes called an "Incentive Award." The Class Representative will request that the Court approve an Incentive Award of \$10,000, which will be deducted from the settlement if approved by the Court.

11. Why does the Labor Workforce Development Agency receive any money?

A California law called “PAGA” allows private citizens to step into the State of California’s shoes and recover civil penalties for alleged violations of California’s Labor Code. Seventy-five (75) percent of any such recovery must be given to the State. In the present case, the Settlement provides that \$75,000 be paid to the State as its share of the penalties recovered in this case. If the Court awards less than this amount, the difference will be made available for distribution to class members.

12. How will the lawyers be paid?

Class Counsel will ask the Court for up to \$666,667.00 (or 33% of the settlement) in attorneys’ fees for their time and work performed on this case over the last two years. Class Counsel will also ask the Court for up to \$20,000 to reimburse them for costs incurred in the case such as expert witness fees, court fees, and travel expenses. If the Court grants their request, the attorneys’ fees, costs and expenses will be deducted from the \$2 million settlement fund. If the Court awards less than this amount, the difference will be made available for distribution to class members. Barstow will pay its own lawyers. Class Counsel’s Class Counsel’s application for attorneys’ fees and expenses will be available on [date] on [insert website].

MEMBERS OF THE CLASS

13. How do I know if I am part of the Class?

You are included in this lawsuit if you were a nonexempt employee for Barstow in California between March 5, 2016 and [PRELIM APPROVAL DATE] (the “Class Period”), and you do not request to be excluded. You are receiving this notice because Barstow’s records indicate that you are or were employed as a non-exempt during the Class Period. If you have a question about whether or not you are a Class member, please call [insert number].

YOUR RIGHTS AND OPTIONS

14. What happens if I do nothing at all?

If you do nothing, you are choosing to stay in the Class and you will receive a settlement payment if the Court approves the Settlement. You will be legally bound by all orders and judgments of the Court with regards to the settlement and this lawsuit and you will not be able to sue or continue to sue Barstow in a different case over the legal claims included in this lawsuit. By staying in the Class, you will release all claims you may assert against Barstow under state and local law that were alleged in the lawsuit or could have been asserted based on the facts and allegations made in the lawsuit. To read the entire release of claims, you may access the settlement agreement at [insert website]. If you have questions about what claims you are releasing by participating in this settlement please contact Class Counsel.

15. What happens if I exclude myself?

If you exclude yourself from the Class, you: (1) will not be legally bound by the Court’s decisions; (2) will keep any rights you may have to sue Barstow for the legal claims included in this lawsuit and represent your own interests using counsel of your choosing; and (3) will not obtain your share of money if the Court approves the settlement in this case.

16. How do I ask to be excluded?

To exclude yourself, send a letter that states you want to be excluded from *Serrano v. Hospital of Barstow, Inc. d/b/a Barstow Community Hospital*, Case No. CIVDS2006967. Include your name, address, telephone number, the last four digits of your social security number, and your signature. You must mail your exclusion request letter so that it is postmarked NO LATER THAN **Month XX, 2023** to: [insert settlement administrator address]. **NOTE:** If you are an Aggrieved Employee (a class member who worked between March 5, 2019 and [PRELIM APPROVAL]), you cannot opt-out of the PAGA portion of the proposed Settlement.

17. How can I object or tell the Court I don't like the settlement?

If you are a Class Member **and you do not exclude yourself**, you may object to the Settlement before Final Approval of the Settlement by the Court. If you choose to object to the Settlement, you may enter an appearance by yourself or through an attorney that you hire and pay for yourself. Any written objection must state your full name, include a statement of the reasons for your objections, and be signed. You must mail your objection so that it is postmarked NO LATER THAN **Month XX, 2023** to: **Settlement Administrator, insert address**. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether the objection was timely submitted. You may also appear at the Settlement Fairness Hearing and present your objection to the Court. Any Class Member who submits a Request for Exclusion will not have the right to object to the Settlement.

You may also write a letter in support of the settlement or to tell the Court that you think the settlement should be approved. You must mail your letter so that it is postmarked NO LATER THAN **Month XX, 2023** to: **Settlement Administrator, insert address**.

18. Can Barstow retaliate against me for staying in the Class or excluding myself?

No. Barstow and its owners, officers, managers, and supervisors will not (and cannot) retaliate against you for participating in this lawsuit, for asking to be excluded, or for objecting to the settlement.

THE LAWYERS REPRESENTING YOU

19. Do I have a lawyer in this case?

If you do not request to be excluded, then yes. The Court has appointed the law firm of Moon & Yang, APC as Class Counsel to represent Plaintiff and the Class members in this case. These lawyers have experience handling similar cases. You can contact these lawyers and their law firm at the phone numbers and email addresses below:

Kane Moon
H. Scott Leviant
scott.leviant@moonyanglaw.com
Mariam Ghazaryan
mariam.ghazaryan@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128

20. Should I get my own lawyer?

If you elect to remain a Class member, you do not need to hire your own lawyer because Class Counsel is representing Plaintiff and all the other Class members. If you want someone other than Class Counsel to speak for you, you may hire your own lawyer at your own expense.

THE SETTLEMENT FAIRNESS HEARING

21. How and when will the Court decide to approve the settlement?

The Court will hold a Settlement Fairness Hearing on **[DATE]**. The Settlement Fairness Hearing will take place in Department S-26 of the San Bernardino Superior Court, located at 247 West 3rd Street, San Bernardino, California 92415-0210. The Settlement Fairness Hearing may be moved to a different date or time without additional notice. Due to the COVID-19 pandemic, it is possible that the Settlement Fairness Hearing will be held remotely and accessible by phone through CourtCall or via Zoom. Please check **[insert website]** for updates.

22. Do I have to come to court?

No. If you choose to, you or your lawyer **may** appear in Court for this case at your own expense, but you do not have to.

GETTING MORE INFORMATION

23. Is more information about the lawsuit available?

More information about the lawsuit is available by visiting [insert website]. You can also ask questions by calling toll-free [insert number], writing to Barstow Class Action Administrator, [insert address], or contacting Class Counsel.

You may also obtain more information by accessing the Court docket in this case, through the San Bernardino Superior Court's website by going to <https://cap.sb-court.org/search> and entering the Case Number for the Action, CIVDS2006967.

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE

Exhibit “B”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
Kane.moon@moonyanglaw.com

March 4, 2020

VIA ONLINE SUBMISSION

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

VIA CERTIFIED MAIL

Community Health Systems, Inc.
Barstow Community Hospital
22675 Alessandro Blvd.
Moreno Valley, CA 92553

Notice of Labor Code Violations and PAGA Penalties

Re: ***Samantha Joe Serrano v. Community Health Systems, Inc. dba Barstow Community Hospital***

To Whom It May Concern:

Please be advised that my office has been retained by Samantha Joe Serrano (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Community Health Systems, Inc. dba Barstow Community Hospital. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of Plaintiff as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a surgical technician from approximately June 2017 to March 27, 2019, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per week, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). For example, Defendants regularly required Plaintiff and the Class to be on-call, including while waiting up to 48 hours at hotels. During the hotel stays for example, Plaintiff and the Class were unable to leave the hotel and were required to remain on-call at all times. Despite being on call day and night, Plaintiff and the Class were not paid overtime wages. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours).

Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the

wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with 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, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
6. Labor Code § 226 by failing to provide accurate itemized wage statements; and
7. Labor Code § 204 by failing to pay all earned wages two times per month.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

LWDA
Notice of Labor Code Violations and PAGA
March 4, 2020
Page 8 of 8

MOON & YANG, APC

A handwritten signature in blue ink, appearing to read 'Kane Moon', is written over a faint, larger blue signature that also appears to read 'Kane Moon'.

Kane Moon
Attorney at Law