

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AND RELEASE AGREEMENT

Thomas Brewer v. Elm ADHC, et al., San Diego County Superior Court
Case No. 37-2020-00018551-CU-OE-NC
(the “Action”)

This Settlement and Release Agreement (“Agreement”) is made and entered into by and between plaintiff THOMAS BREWER (“Plaintiff”), individually and on behalf of the State of California pursuant to Labor Code § 2699 *et seq.* (the Private Attorneys General Act [“PAGA”]) on the one hand, and defendant CA RELIABLE MEDICAL SYSTEMS, INC. (“Defendant”), erroneously sued as ELM ADHC, on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Agreement shall be binding on Plaintiff and all PAGA Members (as defined below) he seeks to represent and on Defendant, its affiliated entities, parents, subsidiaries, owners, officers, executives, directors, and managers, subject to the terms and conditions hereof and the approval of the Court.

I. NATURE OF ACTION

1. On February 28, 2020, Plaintiff sent notice to the Labor and Workforce Development Agency (“LWDA”) giving notice of his intent to pursue a representative PAGA action, on behalf of himself and the State of California as well as on behalf of other aggrieved employees (the “PAGA Notice”).

2. On May 27, 2020, Plaintiff filed the Action against Defendant asserting a single claim under Labor Code § 204 and § 210.

3. On March 19, 2021, Plaintiff filed the Notice and Acknowledgment of Receipt by Defendant of the summons, complaint, and related materials.

4. Shortly thereafter, the Parties began cooperatively undertaking informal discovery. Defendant provided Plaintiff and PAGA Counsel (as defined below) with information about the number of potentially aggrieved employees, the number of pay periods at issue, and position

regarding potential liability. Based on this information, the Parties initiated settlement negotiations.

5. On or about October 26, 2021, the Parties agreed to terms for complete settlement of the Action, which was negotiated at arms-length with each Party having had the opportunity to consider all known facts and circumstances.

II. REPRESENTATIONS AND ADDITIONAL DEFINITIONS

1. “Released Parties” shall mean and refer to Defendant CA RELIABLE MEDICAL SYSTEMS, INC., its affiliated entities, parents, subsidiaries, owners, officers, executives, directors, and managers.

2. “PAGA Counsel” shall collectively refer to Dennis S. Hyun of Hyun Legal, APC and William L. Marder of Polaris Law Group, LLP.

3. “Counsel for Defendant” and “Defense Counsel” shall collectively refer to as Daniel E. Gardenswartz and Harsh Y. Ronvelia of Solomon Ward Seidenwurm & Smith, LLP. (“SWSS”).

4. “Covered Period” shall mean the period from February 28, 2019 to the date that the Court enters an order granting approval of this Agreement.

5. “PAGA Members” shall mean and refer to all current and former employees of Defendant, including Plaintiff, who are or have been employed by Defendant or its predecessors or merged entities in the State of California who worked one or more pay periods during the period between February 28, 2019 through the date the Court enters an order granting approval of this Agreement.

6. “Court” refers to the San Diego County Superior Court.

7. “PAGA Member Share” shall mean and refer to each of the PAGA Members’ 25% of PAGA penalties allocated to the PAGA Members in accordance with Labor Code § 2699(i). Cumulatively, it shall be referred to as “PAGA Member Shares.”

8. “Settlement Administrator” shall refer to Phoenix Settlement Administrators.

9. “Covered Claims” means any and all claims, demands, rights, liabilities, and/or causes of action for PAGA penalties pursuant to Labor Code § 2698 *et seq.*, arising from any and all alleged violations of Labor Code § 204 and § 210, and any other claims construed to be asserted in the Action and PAGA Notice or which could have been brought as a PAGA claim within the Covered Period based on the allegations contained in the Action and PAGA Notice.

10. “Eligible Pay Periods” means the fifty-six (56) total pay periods between February 2019 and May 2021 that one or more of the PAGA Members received a wage statement during the Covered Period.

11. “Effective Date” and “Final” shall mean the date that the Court grants approval to the settlement embodied herein and any appeal period has run, unless there is an objection or appeal by the LWDA, in which case the operative date shall be either: (i) when any objection is overruled and the appeals period runs; or (ii) when the appeals court issues a final unappealable ruling overruling the objection.

12. “Gross Settlement Amount” or “GSA” shall mean and refer to the \$75,000.00 that Defendant is obligated to pay under the terms of this Agreement. The GSA is non-reversionary, such that the entire amount will be disbursed under the stipulated terms and none of it will revert to Defendant.

13. Plaintiff alleges that Defendant failed to timely pay Plaintiff and all aggrieved employees, in violation of Labor Code § 204, and that this underlying conduct gives rise to a claim pursuant to PAGA.

14. Defendant vehemently denies Plaintiff’s claim and all allegations asserted in the Action and PAGA Notice. Defendant contends, among other things, that it has at all times complied with the Labor Code, the related Wage Orders, and all other state and federal wage laws, and further contends that the Action is without merit. Defendant has denied and continues to deny each and every factual allegation and alleged claim asserted as part of the Action and the PAGA Notice. Additionally, even if Plaintiff were to prevail on this claim, Defendant vehemently disputes that that heightened PAGA penalties would apply, including those potentially

recoverable under Labor Code § 210. Defendant further contends that the imposition of the asserted penalties would be unjust, arbitrary, oppressive, and confiscatory.

15. The Parties recognize that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have considered the risk and uncertainty of the outcome inherent in any litigation. This risk also includes Defendant's financial condition and the collectability of any judgment that may be issued against it.

16. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the PAGA Members' allegations against Defendant.

17. Based on their own independent investigations and evaluations, Plaintiff and PAGA counsel are of the opinion that the stipulated settlement terms as set forth in this Agreement are fair, reasonable, adequate, and in the best interests of the Plaintiff, the State of California, and the PAGA Members in light of all known facts and circumstances and the risks inherent in litigation, including potential appeals. Further, PAGA Counsel believes that the agreed-upon settlement terms are in the best interests of the PAGA Members and that settlement is fair, reasonable, and adequate for the State of California and each of the PAGA Members, particularly given the inherent risk of litigation and Defendant's present financial condition.

18. The purpose of this Agreement is to settle and compromise the Action and all Covered Claims that Plaintiff and the PAGA Members may have against the Released Parties. Neither the existence of this Agreement nor anything contained in this Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a representative action other than for settlement purposes. Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the settlement of the Action: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any

wrongdoing or liability on the part of either Defendant or of the truth of any of the factual allegations in the operative complaint in the Action; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Agreement; and (d) shall not constitute or be deemed a waiver of Defendant's right to compel arbitration of any dispute with any of the PAGA Members. It is Plaintiff's position, however, that PAGA claims cannot be arbitrated, as a matter of law, and by signing this Agreement, Plaintiff in no way concedes that PAGA claims can be arbitrated.

19. The Parties agree that upon full execution of this Agreement, discovery and any other proceeding unrelated to the Agreement, is informally stayed while the parties undertake the work necessary to obtain court approval of the Agreement. To facilitate such approval from the Court, PAGA Counsel shall prepare and file a Motion for Final Approval of PAGA Settlement ("Motion for Approval"), which shall be submitted for review and approval to Counsel for Defendant prior to filing. In the event the Court does not grant this Motion for Approval, the Parties will reconvene in good faith and attempt to rectify the shortcomings to the extent possible before PAGA Counsel is to resubmit the Motion for Approval with all appropriate possible changes and/or additions. In the event the Court does not grant either version of the Motion for Approval, the Parties will be restored to their positions prior to the Agreement and the Agreement shall be deemed null and void. The informal stay on discovery and any other proceedings unrelated to the Agreement will be lifted five (5) court days after the Court's rejection of the revised Motion for Approval. Plaintiff and PAGA Counsel will not file any Motion for Approval without permission to file from Counsel for Defendant. The Parties understand and agree that all of the time that this matter has been informally stayed shall be excluded from calculation of the 5-year rule to bring this matter to trial as required pursuant to Code of Civil Procedure § 583.010.

III. TERMS OF SETTLEMENT

20. In consideration of the mutual covenants, promises, and representations set forth in this Agreement, Plaintiff, on behalf of the PAGA Members and the State of California as a Private Attorney General, on the one hand, and Defendant, on the other, agree to settle and compromise the Action and the Covered Claims, subject to the settlement and release terms and conditions set forth in this Agreement.

21. The Amount of Settlement. As consideration for the settlement and release and other terms described in this Agreement, Defendant agrees to pay the GSA, in a total amount of **\$75,000.00**. This GSA payment is inclusive of the following:

- a. PAGA Counsel's fees request of 33 and 1/3% of the GSA (\$25,000.00), to which Defendant will not object;
- b. PAGA Counsel's request for actual costs up to the amount of \$10,000.00, to which Defendant will not object;
- c. Service Award to Plaintiff in the amount of \$5,000.00, to which Defendant will not object;
- d. Administration costs of \$2,400 to be paid to the Settlement Administrator; and
- e. the remainder of the GSA after deducting the items (a), (b), (c) and (d) above, which shall be designated as the "PAGA Penalty Fund."

22. Allocation and Calculation of the PAGA Penalty Fund. Each of the PAGA Members shall receive a portion of the PAGA Penalty Fund on a pro-rata basis determined by the number of Eligible Pay Periods each of the respective PAGA Members worked during the Covered Period. The anticipated total PAGA Penalty Fund will be approximately \$32,600.00. Seventy-five percent (75%) of the PAGA Penalty Fund will be paid to the LWDA as required by

Labor Code § 2699(i) (\$24,450.00) (the “LWDA Payment”). The remaining twenty-five percent (25%) of the PAGA Penalty Fund will be distributed to PAGA Members on a pro-rata basis based on the formula set forth below (\$8,150.00). Each PAGA Member’s pro-rata share of the PAGA Penalty Fund represents his or her PAGA Member Share.

- a. PAGA Member Shares. Plaintiff and each of the PAGA Members shall receive a pro rata share of the twenty-five percent (25%) of the PAGA Penalty Fund allocated to PAGA Members. Plaintiff and each of the PAGA Members shall receive a pro-rata value equal to PAGA Members’ 25% of the Penalty Fund multiplied by the ratio of (a) the number of Eligible Pay Periods worked by him or her to (b) the total number of Eligible Pay Periods worked by all PAGA Members during the Covered Period. All payments made to PAGA Members (“Individual Settlement Payments”) will be reported on an IRS Form 1099.

23. PAGA Counsel’s Fees and Costs. As part of the Motion for Approval of this Agreement, PAGA Counsel will request court approval of 33 1/3% of the GSA, which is \$25,000.00 in attorneys’ fees. PAGA Counsel will request actual cost reimbursement up to the amount of \$10,000.00 for costs incurred by PAGA Counsel. Should PAGA Counsel request a lesser amount for attorneys’ fees and costs and/or the Court approve a lesser amount, the difference shall be allocated to the PAGA Penalty Fund and distributed accordingly. Any attorneys’ fees and costs awarded to PAGA Counsel, hereinafter referred to as “PAGA Counsel Fees & Costs,” shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Action and all work remaining to be performed in fully and finally resolving the Action, including but not limited to securing Final Court approval of the Agreement, and all costs that PAGA Counsel has incurred or will incur.

24. Plaintiff Service Award. As part of the Motion for Approval of this Agreement, Plaintiff will request a Service Award for serving as the PAGA representative in the amount of \$5,000.00. Should the Court approve a lesser amount, the difference shall be allocated to the

PAGA Penalty Fund and distributed accordingly. Plaintiff's Service Award shall be referred herein as the "Service Award."

25. Tax Treatment of Settlement Amounts. With regard to settlement payments to PAGA Members and Plaintiff, IRS Forms 1099 will be issued. Nothing in this Agreement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the GSA in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Agreement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant, Defendant's counsel, and Plaintiff's counsel are not responsible for any of the PAGA Members' and Plaintiff's tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments. Plaintiff's Service Award shall also be reported on a Form 1099 and Plaintiff shall assume full responsibility and liability for the payment of taxes due on such payments.

IV. RELEASE

26. Release By All PAGA Members. Upon the approval by the Court of this Agreement, each of the PAGA Members, including Plaintiff, shall, for the period from February 28, 2019 to the date that the Court approves this Agreement, fully release and forever discharge the Released Parties, subject to the terms and conditions hereof and the approval of the Court, from the Covered Claims and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted for penalties pursuant to Labor Code § 2698 *et seq.*

27. Release By Plaintiff. Upon approval by the Court of this Agreement, Plaintiff shall fully release and forever discharge the Released Parties for any and all causes of action, obligations, costs, expenses, damages, claims, liabilities, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or otherwise, of any kind whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date that Plaintiff signs this Agreement, including but not limited to any claims or causes of action which were, or could have been asserted in the Action and/or arising out of his employment with the Released Parties.

V. ADMINISTERING THE SETTLEMENT AND PAYMENT PLAN

28. Within thirty (30) calendar days after the Effective Date, Defendant will compile a list of the PAGA Members ("PAGA Member List") containing: (1) name; (2) last known home address and telephone number; (3) number of Eligible Pay Periods employed during the Covered Period; and (4) social security number, to the extent available.

29. Defendant shall make and pay the Settlement Payments in accordance with the following payment and distribution plan:

- a. Within thirty (30) calendar days of the Effective Date, Defendant shall deposit with the Settlement Administrator \$15,000.00 (the "Initial Payment");
- b. Between the 1st and 5th of every month for the subsequent (20) months after the Initial Payment, Defendant shall deposit with the Settlement Administrator \$3,000.00 (the "Subsequent Payments") until the balance of \$60,000.00 is completely paid;
- c. Within thirty (30) calendar days of receipt of the 20th and final of the Subsequent Payments, the Settlement Administrator shall distribute:
 - i. PAGA Member Shares in the total estimated amount of \$8,150.00;

- ii. PAGA Counsels' Attorneys' Fees of \$25,000.00 and actual costs up to \$10,000.00;
- iii. Settlement Administrator Costs of \$2,400 to Phoenix Settlement Administrators; and
- iv. The LWDA Payment in the amount of \$24,450.00 to the LWDA.

30. Within thirty (30) calendar days of receiving the 20th and final of the Subsequent Payments from Defendant, the Settlement Administrator shall search for the address of each of the PAGA Members through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information, and shall mail the payment checks representing each PAGA Member Share to the respective addresses. The payment checks for each PAGA Member Share shall be sent to each of the PAGA Members by U.S. First Class mail to the subject individual's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. A written letter approved by the Parties, in advance of Plaintiff filing the Motion for Approval, explaining this Agreement and the PAGA Members' release of Covered Claims will be included in the mailing of each of the PAGA Members' checks and submitted to the Court for its review and approval. It will be conclusively presumed that each of the checks reflecting the PAGA Members' Individual Settlement Payments was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

31. The Settlement Administrator shall ensure that seventy-five percent (75%) of the PAGA Penalty Fund is paid to the LWDA.

32. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. If there are uncashed checks following this period, the Settlement Administer will ensure that uncashed funds shall be forwarded the State of

California Unclaimed Property Fund pursuant to instructions of the California State Controller, and to be held by the Controller in the name of the PAGA Settlement Employee. Any unclaimed funds shall not affect the binding nature of this Agreement as to any of the PAGA Members.

VI. DUTIES OF THE PARTIES PRIOR TO APPROVAL

33. Upon execution of this Agreement by the Parties, PAGA Counsel shall prepare the Motion for Approval for review and approval by Counsel for Defendant, before ultimately filing with the Court for approval of the Agreement and corresponding proposed settlement and release terms. PAGA Counsel shall apply to the Court for the entry of an order and final judgment approving this Agreement as required by Labor Code § 2699(l). The Motion for Approval will request the Court's approval of the following:

- a. All terms contained in this Agreement;
- b. Amounts of PAGA Counsel's Fees & Costs; and
- c. Approval of the settlement in this Agreement.

34. As part of the Motion for Approval, PAGA Counsel will include a proposed Order requesting approval of this Agreement and its terms, which shall be binding upon all PAGA Members.

VII. PARTIES' AUTHORITY

35. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

VIII. MUTUAL FULL COOPERATION

36. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the settlement and release terms set forth herein. As soon as practicable after execution of this Agreement, PAGA Counsel shall, with the assistance and cooperation of

Defendant and its counsel, take all necessary steps to secure the approval of this Agreement from the Court.

IX. CONFIDENTIALITY

37. Other than information necessary to secure Court approval of this Agreement and the settlement contained herein, the Parties agree to keep confidential all matters relative to this Agreement, including the claims asserted by Plaintiff in the Action and PAGA Notice, and the settlement terms, including the facts and circumstances leading up to it. None of the Parties will issue any press release or other disclosure regarding the Agreement and/or settlement other than as necessary to obtain Court approval or effectuate the settlement and release terms. The Parties further agree that neither party, nor their respective counsel, will discuss the existence of this Agreement except as necessary to effectuate its terms or as otherwise required by law, including any and all obligations towards the LWDA and warranted responses to inquiries and/or concerns from PAGA Members. The Parties may, however, discuss the terms of this Agreement with their spouses, attorneys, financial advisors, tax advisors, and accountants as necessary for tax related purposes, or upon a valid court order, at which time the individual receiving information about the terms of this Agreement shall be informed that the terms of this Agreement are confidential, and the individual may not reveal or disclose to any third party the terms of the Agreement.

X. NO PRIOR ASSIGNMENTS

38. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or purported to assign, or transfer to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein settled, released, and discharged except as set forth in this Agreement. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

XI. NO ADMISSION

39. Nothing contained herein nor is the consummation of this Agreement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Released Parties. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims.

XII. ATTORNEYS' FEES, COSTS, AND EXPENSES

40. Except as specifically set forth herein, each party shall bear its/his own attorneys' fees, costs, and expenses, taxable or otherwise, incurred from litigation relating to this Action and this Agreement, and shall not seek reimbursement thereof from any other party to this Agreement. However, if an action is brought to enforce this Agreement and any of its terms contained therein, the prevailing party shall be entitled to its/his reasonable attorneys' fees and costs.

XIII. CONSTRUCTION

41. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire contract between Plaintiff (on behalf of himself and all other PAGA Members) and Defendant regarding actual or potential claims asserted by Plaintiff against the Released Parties. Excluding any arbitration or confidentiality agreement executed by Plaintiff or any of the other PAGA Members, on the one hand, and Defendant, on the other hand, all of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by any of the Parties to another as to any matter addressed in this Agreement shall be binding or valid.

XIV. CAPTIONS AND INTERPRETATIONS

42. 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 Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

XV. MODIFICATION

43. This Agreement may not be amended, changed, altered, or modified, except in writing and signed by the Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms or by a subsequent written contract signed by the Parties.

XVI. MISCELLANEOUS

44. This Agreement contains the entire agreement between the Parties relating to the settlement, release, and discharge of the Covered Claims, and all prior or contemporaneous agreements (except any arbitration 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. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

45. This Agreement shall be binding upon and inure to the benefit of the Parties, the PAGA Members, and their respective heirs, trustees, executors, administrators, successors, and assigns.

46. Concurrently with sending the appropriate PAGA Member Shares, the Settlement Administrator will notify all PAGA Members of the binding nature of the release through an accompanying written letter that will be approved by the Parties in advance of Plaintiff filing the Motion for Approval, and the Parties agree that such shall have the same force and effect as if this Agreement were executed by each of the PAGA Members.

47. Neither Plaintiff nor PAGA Counsel shall seek, encourage, or otherwise solicit any other current and/or former employees of Defendant for the purpose of instituting or pursuing any claims against Defendant that are related to, arising from, or otherwise associated with this Agreement.

48. This Agreement may be executed in counterparts, electronically, e.g., DocuSign, and when each of the Parties has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

49. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice-of-law principles.

50. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any of the Parties on the basis that it, or its counsel, was the drafter or participated in the drafting of this Agreement.

51. The San Diego County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure § 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and PAGA Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

52. This Agreement shall not be subject to collateral attack by any of the PAGA Members. Such prohibited collateral attack shall include, but not be limited to, claims that the PAGA Members failed, for any reason, to timely receive their Individual Settlement Payments.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: December 17, 2021

DocuSigned by:

THOMAS BREWER,
as PAGA Representative

DATED: December __, 2021

CA RELIABLE MEDICAL SYSTEMS, INC.
By: Dmitry Braverman
Its: Chief Executive Officer

APPROVED AS TO FORM AND CONTENT:

DATED: December __, 2021

**SOLOMON WARD SEIDENWURM &
SMITH, LLP**

By: _____
Daniel E. Gardenswartz
Harsh Y. Ronvelia
Attorneys for Defendant CA RELIABLE
MEDICAL SYSTEMS, INC.

DATED: December 17, 2021

HYUN LEGAL, APC

By:  _____
Dennis S. Hyun
Attorneys for Plaintiff THOMAS BREWER and
PAGA Members

DATED: December 17, 2021

POLARIS LAW GROUP, LLP

By:  _____
William L. Marder
Attorneys for Plaintiff THOMAS BREWER and
PAGA Member

EXHIBIT 1

[CLAIMS ADMINISTRATOR LETTERHEAD]

Notice of PAGA Settlement and Release Agreement

[Mailing Date]

[Address]

RE: Settlement Payment

Enclosed is your settlement payment from the settlement of the lawsuit entitled *Brewer v. Elm ADHC*, Case No. 37-2020-00018551-CU-OE-NC, Superior Court of the State of California for the County of San Diego (“Action”). This Action was filed by Plaintiff Thomas Brewer (“Plaintiff”) against Defendant CA Reliable Medical Systems, Inc. (erroneously sued as Elm ADHC) (“Defendant” or “Company”) pursuant to the California Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (the “PAGA”).

The Action was brought on behalf of the State of California and all similarly situated “aggrieved employees” of the Defendant for civil penalties for the Company’s alleged failure to timely pay wages in violation of Labor Code §§ 204 and 210. Defendant denies any wrongdoing or that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, Defendant agreed to pay a gross settlement amount of \$75,000.00, which shall be distributed as follows: (1) \$25,000.00 in attorneys’ fees and \$1,027.07 in costs; (2) \$5,000.00 for Plaintiff’s service award; (3) \$2,400.00 to the settlement administrator for its costs; and (4) 75% of the remaining PAGA penalty fund, or \$31,179.70, to the Labor Workforce Development Agency for its share of penalties. Under the PAGA, certain penalties get divided between the State and the employees. As a result of this settlement, the State’s and your ability to seek penalties recoverable under the PAGA for the claims described above have been settled.

The settlement group includes all current and former employees of Defendant, including Plaintiff, who are or have been employed by Defendant or its predecessors or merged entities in the State of California and worked one or more eligible pay periods during the period of time covered by the settlement and release of claims, which is from February 28, 2019 through [Approval Date] (“Covered Period”). You are releasing Defendant, its affiliated entities, parents, subsidiaries, owners, officers, executives, directors, and managers from any and all claims, demands, rights, liabilities, and/or causes of action for PAGA penalties pursuant to Labor Code § 2698 *et seq.*, arising from any and all alleged violations of Labor Code § 204 and § 210, and any other claims construed to be asserted in the Action and PAGA Notice or which could have been brought as a PAGA claim within the Covered Period based on the allegations contained in the Action and PAGA Notice.

You have been identified as having worked [X] eligible pay periods in California as an employee of Defendant between February 28, 2019 and [Approval Date]. Enclosed is a check made out to you in the amount of \$(amount). The check represents your share of the settlement for PAGA civil penalties. The check will expire 120 calendar days from the date it was issued. After the 120 day period, the administrator will send any unclaimed funds to the State of California Unclaimed Property Fund. If you were unable to cash your check for any reason during the 120-day check cashing period, you can contact the State of California Controller’s Office to see if you can obtain your funds. Even if you fail to cash the enclosed check, you will still be deemed to have waived all claims based on or arising from the Action, including all claims set forth in the release of claims described above.

If you have any questions, you can contact the settlement administrator at [add contact information].

Sincerely,

[Administrator]