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Attorneys for Plaintiff CECILLE SARMIENTO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CECILLE SARMIENTO, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

CADUCEUS HEALTHCARE INC, a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-00002597-CU-OE-CTL

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: September 9, 2022

Time: 10:30 a.m.

Judge: Hon. Richard S. Whitney

Dept.: 68

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am co-counsel of record for
5 Plaintiff CECILLE SARMIENTO (hereafter "Plaintiff") in this wage and hour class action filed against
6 CADUCEUS HEALTHCARE INC. (hereinafter "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's motion for Preliminary
8 Approval of Class Action Settlement.

9 **I. EXHIBITS**

10 3. Attached hereto as **Exhibit "1"** is a true and correct copy of the fully executed Joint the
11 Stipulation of Settlement of Class Action and PAGA Action Claims and Release of Claims
12 ("Agreement" or "Settlement Agreement"). Attached as **Exhibit "A"** to the Agreement is a true and
13 correct copy of the proposed Class Notice.

14 4. Attached hereto as **Exhibit "2"** is a true and correct copy of the proof of filing with the
15 Labor and Workforce Development Agency notice of this settlement with the Settlement Agreement
16 and Motion for Preliminary Approval of Class Action and PAGA Action Settlement evidencing Class
17 Counsel's compliance with California Labor Code Section 2699(l)(2).

18 **II. INTRODUCTION**

19 5. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
20 the Settlement Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at
21 arm's length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by
22 the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs
23 pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class
24 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
25 certification being denied or of Defendants prevailing at trial. Given that there are approximately 115
26 Class Members, the average gross recovery is approximately \$1,369.57 (Net Settlement Amount
27 divided by Class Members).

6. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. The average Individual Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement.

III. FACTS AND PROCEDURE

A. Overview of the Litigation

7. Defendant provides a wide range of staffing and recruiting firm that provide Medical (Physicians, Nurses, Ancillary), IT, Scientific, and Administrative Services. Defendant operates 6 locations in California. This action asserts claims on behalf of Defendant's non-exempt employees working at those California locations. Plaintiff worked for Defendant as a non-exempt employee in California between February 3, 2020 to April 3, 2020. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents the "Human Resources Manual."

8. On June 18, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA").

9. On January 20, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2021-00002597-CU-OE-CTL ("Class Action"). The Class Action alleged eleven causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California

1 Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code
2 §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7
3 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code
4 §226; (7) Failure to Reimburse Employees for Required Expenses; (8) Failure to Provide Wages When
5 Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Failure to Timely Pay Earned Wages
6 in Violation §204(a); (10) Wrongful Termination in Violation of Public Policy; and (11) Violation of
7 the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*] (“Class Claims”).

8 10. Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to
9 provide compliant meal and rest periods, failed to pay overtime at the correct regular rate of pay, failed
10 to furnish accurate itemized wage statements, and failed to pay all wages upon separation failure.
11 Defendant forcefully denies liability for each of Plaintiff’s claims. Further, Defendant asserts that it
12 fully complied with all applicable employment laws and raised several other significant defenses to
13 Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies, written
14 policies requiring all tasks to be performed while on-the-clock, compliant wage statements, and timely
15 paid all wages due upon separation of employment.

16 11. Plaintiff commenced written discovery in April 2021. Before answering Plaintiff’s
17 written discovery, the Parties agreed to mediate the action. In anticipation of mediation, the Parties
18 agreed to stay formal discovery and continue deadlines for class certification.

19 12. To prepare for mediation, the Parties agreed to informally produce additional documents
20 and data points subject to the mediation privilege, including but not limited to, a sampling of the Class
21 Members’ time and payroll data, and pertinent written wage and hour policies. As discussed *infra*,
22 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
23 Defendant’s time and payroll data.

24 13. On September 8, 2021, the Parties participated in a full day mediation with highly
25 regarded mediator and respected San Diego jurist Hon. Steven Denton (Ret). After arms-length
26 negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of
27

1 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-
2 form settlement agreement, which is the subject of the instant motion.

3 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

4 14. Months before filing the Action, Class Counsel began its pre-filing investigation into the
5 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
6 Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment,
7 including her hiring documents, compensation policies, benefit plans and wage statements. At the
8 conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further
9 inquiry.

10 15. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In
11 response, Defendant produced hundreds of pages of documents, including but not limited, copies of
12 Plaintiff's Human Resource Policy Manual, payroll and time records, and a representative portion of
13 aggrieved employees' payroll and time records and wage statements. Class Counsel reviewed and
14 analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that
15 Defendant's failed to, among other things, pay for all time worked and to provide compliant meal and
16 rest periods.

17 16. Considering the many anticipated factual disputes, the Parties agreed, that it would be in
18 the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel
19 requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability
20 exposure to the Class Members. In response to Class Counsel's request, Defendant produced a
21 sampling of Class Member time and payroll records, aggregate workweek and pay period data, and
22 copies of applicable handbooks, policies, and agreements containing, *inter alia*, compensation,
23 timekeeping and meal and rest period policies. In total, Defendant produced approximately 350 pages
24 of pertinent policy documents and approximately 40,000 unique cells of time and payroll data for Class
25 Counsel to analyze.

26 17. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
27 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services

1 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
2 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
3 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

4 18. BCG analyzed Defendant's time and payroll data to assist in the development of various
5 damage models. Among other things, BCG determined the approximate number of work shifts,
6 workweeks, pay periods, average length of shift and average number of hours worked per week and pay
7 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and
8 rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the
9 amount of off-the-clock work performed by the Class Members during the Class Period.

10 19. In advance of mediation, Class Counsel created several damage models predicated on the
11 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while
12 accounting for the uncertainties of continued litigation. These damage models informed and guided
13 Class Counsel during the mediated settlement discussions.

14 20. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
15 determining Plaintiff's suitability as a putative class representative through interviews, background
16 investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims;
17 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
18 and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing
19 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
20 outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
21 estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with hundreds
22 of putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This
23 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
24 as well as the impediments to recovery, such as to make an independent assessment of the
25 reasonableness of the terms to which the Parties have agreed.

26 **C. The Parties Settled at Mediation**
27
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21. On September 8, 2021, the Parties conducted a full day of mediation with Hon. Steven Denton (Ret), a respected jurist and a highly regarded wage and hour mediator. Judge Denton helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. After nearly eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.

22. At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the mediation session nearly concluded without a settlement. The matter resolved only when the Mediator issued a mediator's proposal that the Parties accepted. The Mediator only arrived at his proposal after hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses.

23. Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue.

IV. ARGUMENT

A. The Court Should Preliminarily Approve the Settlement

24. The Gross Settlement Amount of \$315,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for the Class damages,

1 excluding PAGA Penalties, to be \$1,876,101 (“Damages Model”) if successful at trial. Thus, the Gross
2 Settlement Amount of \$315,000 represents approximately 16.7% of the of Defendant’s liability
3 exposure for class damages.

4 (1) Estimate Damages for Failing to Pay for Unpaid Wages

5 25. Plaintiff alleged that Defendant failed to pay for all hours worked. Specifically, Plaintiff
6 asserted that Defendant failed to pay for all time spent under Defendant’s control post-shift, including
7 but not limited to, requiring Plaintiff to complete any incoming calls from the public and Customs and
8 Borer Patrol regarding Covid-19 and inputting the information for the Centers for Disease Control and
9 Prevention (“CDC”) into a database before being relieved for duty, regardless if the time spent finishing
10 the phone call and inputting the information caused her to work over 8 hour shift. Additionally, Plaintiff,
11 after finishing the phone call and inputting the information into the database, was required to shut down
12 her computer and secure return to the supervisor’s office, make sure the phones were off, disinfect her
13 work station, wipe down all the surfaces, make sure the lights were off and lock up the conference room,
14 all while off-the-clock.

15 26. Plaintiff also alleges that Defendant failed to accurately calculate Plaintiff’s regular rate
16 of pay for the purposes of calculating overtime pay. Here, Defendant paid “Cash-in-Lieu” benefit
17 compensation to Plaintiff described as “HW” and “HW CA” in Plaintiff’s wage statements. In total,
18 Defendant paid cash-in-lieu benefits on 60% of Plaintiff’s wage statements. When calculating
19 Plaintiff’s regular rate of pay for the purposes of overtime compensation, Defendant did not include the
20 payments in the regular rate of pay. Defendant’s failure to include the cash-in-lieu benefits in Plaintiff’s
21 regular rate of pay calculation resulted in systematic and uniform underpayment of overtime wages
22 during the Class Period.

23 27. Defendant vigorously denied liability for claim. In discovery, Defendant produced
24 several California specific operation manuals and policies first published in 2016. Collectively,
25 Defendant asserted that these written policies and procedures prohibited off-the-clock work and
26 required employees to see supervisor approval prior to any unscheduled work. Defendant asserted that
27 any deviation from these written policies was subject to disciplinary action and, thus, created

individualized issues of liability unsuitable for class treatment. Plaintiff's estimated Defendant's exposure for this claim at \$201,199.

(2) Estimate Damages for Meal Period Violations

28. Plaintiff also alleges that Defendant maintained facially unlawful meal period policies failed to provide compliant meal periods. Specifically, Plaintiff alleges that the Defendant failed to provide timely duty-free first meal periods on all shifts greater than five hours, provided late meal periods, provided short meal periods and regularly required employees to work through meal periods. Moreover, Plaintiff alleges Defendant regularly violated the law by round time punches and auto-deducting time for meal breaks.

29. Defendant argued that they fully complied with California meal period laws and maintained legally compliant policies and practices. Similarly, Defendant argued any divergence from these written policies were not systematic and, if they existed at all, were employee specific. Defendant also asserted that it maintained facially compliant meal period policies and practices throughout the Class Period. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations.

30. Plaintiff's meal period claim (together with the rest period claim) likely represented the most factually contested claim in the Actions. Accounting for the strength of Defendant's defenses, and the arguably individualized nature of the claim, Plaintiff heavily discounted Defendant's potential liability for meal period violations. Plaintiff estimated the damages for this claim is an estimated \$255,723.

(3) Estimated Damages for Rest Period Violations

31. Plaintiff also alleged that Defendant maintained facially unlawful rest period policies and failed to provide compliant rest periods. Specifically, Plaintiff alleged that Defendant's did not have a rest period policy in place that did not allow for a rest period regardless of how many hours an employee worked. Plaintiff also alleged that because of their rigorous work schedule they were not able to take timely and duty-free rest periods.

32. Defendant denied liability and asserted that they maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognized the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Class Members missed their meal breaks or that the shifts periods worked by employees did not qualify the employees for rest periods. Certification likely would have required depositions of Class Members. Accordingly, the rest break claim was heavily discounted in Plaintiff's valuation of the case approximately valued at \$477,770.

(4) Exposure for Wage Statement Violations and Waiting Time Penalties

33. Generally, Plaintiff alleges that Defendant's aforementioned violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by Cal. Lab. Code § 226. Defendant could also argue that that meal and rest period violations do not entitled employees like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. *See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the Settlement Class arguably could have seen a payout of nearly \$1 million for these penalties if Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved the penalties. See, e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). The wage statement and waiting time claims were estimate to give rise to \$941,408 in liability.

1 (5) Defendant's PAGA Exposure

2 34. Class Counsel's damage models also estimate Defendant's exposure for PAGA penalties
3 arising from the aforementioned violations. At the time of mediation, Plaintiff estimate Defendant's
4 PAGA exposure at approximately \$815,500.

5 35. Under PAGA, Courts have considerable discretion to reduce the penalty award. In
6 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA
7 penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum
8 penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually
9 awarded no civil penalties, even when Labor Code violations are established. *See also In re Nordstrom*
10 *Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage
11 and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43
12 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

13 36. In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
14 of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
15 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
16 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
17 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered
18 a violation for each pay period the employee worked. Again, Defendant raised several defenses that
19 presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted
20 that the employment practices complied with all applicable Labor Laws. In addition to those arguments
21 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
22 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
23 rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested.

24 37. Accordingly, the Gross Settlement Fund of \$315,000 represents approximately 16.7% of
25 the of Defendants liability exposure for damages and 11.7% of Defendant's liability exposure damages
26 and penalties, as estimated by Class Counsel and BCG at the time of mediation. This is well within the
27 bounds of reasonableness. (*See Viceria v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at
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*3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765 at *4 (Approving California wage and hour misclassification settlement where the class received approximately 7.3% of the estimated trial award was within the “range of reasonableness.”).)

38. Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

B. Litigation Risks

39. With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. See also *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); see also

Duran v. U.S. Bank National Association (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor of plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

40. Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real.

41. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$315,000 that is roughly 16.7% Defendant’s liability exposure for class damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

B. Proposed Notice Informs the Class About the Case and Settlement

42. The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then

1 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
2 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
3 procedure and time period within which to requests for exclusions or objections to the Settlement, the
4 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
5 and scope of the Released Claims. Agreement at §C(14). This method was negotiated by the Parties
6 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
7 effective administration of the Settlement.

8 43. Accordingly, both the method of disseminating the Class Notice and content of the Class
9 Notice satisfy due process and the requirements of California law. (*See* C.R.C. 3.776(e)-(f); *State of*
10 *Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members
11 of the terms of the proposed compromise and of the options open to dissenting class members.").)

12 **C. The Court Should Preliminarily Approve the Enhancement Award**

13 44. Approximately 115 Class Members will share in the net Settlement Amount due entirely
14 to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides
15 for a Class Representative Service Award of \$7,500 for Plaintiff. The service award is fair and
16 reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the
17 litigation and settlement, regularly conferring with Class Counsel on the status of her case and the
18 strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair
19 and provide adequate relief for the Settlement Class.

20 45. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
21 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
22 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
23 Class Representative Service Award.

24 **D. The Court Should Preliminary Approve the Negotiated Class Counsel Award**

25 46. Class Counsel took this matter on a contingency fee basis and invested significant time
26 and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
27 Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The
28

1 Agreement provides for a class counsel Award in the amount of one-third of the Gross Settlement
2 Amount and litigation costs and expenses not to exceed \$15,000. Agreement C(14)(j). Considering the
3 positive outcome for the Class Members, and in light of the supporting authority, the proposed Class
4 Counsel award is fair and reasonable. Plaintiff will file a formal motion for the negotiated Class Counsel
5 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
6 above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

7 **E. The Court Should Provisionally Certify the Settlement Class**

8 47. For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional
9 certification of the Class is appropriate.

10 48. Because all Class Members are Defendant's current and former employees, the class is
11 readily ascertainable from Defendant's regular business records, i.e., payroll records.

12 49. The California statutes relating to each of Plaintiff's claims apply with equal force and
13 effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and
14 Defendant's liability can be determined by facts common to all members of the class. The wage and
15 hour issues are both numerous and substantial, and a class action is the most advantageous method of
16 dealing with the claims of the Settlement Class.

17 50. Plaintiff's wage and hour claims are typical of the proposed Settlement Class because
18 they arise from the same factual basis and are based on the same legal theories applicable to the other
19 Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the
20 Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which
21 the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated
22 her ability to advocate for the interests of the Class Members by initiating this litigation, undertaking
23 extensive class discovery, and evaluating the proposed settlement to assure that it is fair.

24 51. A class action is superior to a multitude of individual lawsuits. Given the size and amount
25 of each individual claim, the Class Members likely have little incentive to litigate their claims on an
26 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
27

claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

F. Class Counsel's Experience

52. Plaintiff, the Settlement Class Members and the Aggrieved Employees are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions, PAGA Actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Eduardo Garcia, Esq. (Associate), Tesla Stone (Paralegal), Leilani Edmunds (Legal Secretary), Leilani (Legal Assistant).

53. I am qualified to represent the Plaintiff, the State of California and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiff, the State of California and the Aggrieved Employees throughout this action.

54. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

55. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

- a. *Nunes v. Home Depot U.S.A., Inc.* San Joaquin Superior Court Case No. Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross appointed the Jean-Claude Lapuyade, Esq. as Class Counsel and approved a \$1.5 million dollar wage and hour class and PAGA action settlement for, among things, unpaid off-the-clock work.

b. *Munoz v. AMTCR, Inc.*, San Bernardino Superior Court Case No. CIVDS2001914 (August 24, 2021 – Hon. David Cohn approved a \$1.85 million dollar wage and hour class and PAGA action for, among other things, inaccurate itemized wage statements, and appointed the JCL Law Firm, APC as Class Counsel.)

c. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

d. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

e. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a PAGA Settlement negotiated on behalf of the State of California and the aggrieved employees by the JCL Law Firm, APC.)

f. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for, *inter alia*, missed meal and rest periods.)

g. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

h. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No. 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL

Law Firm as Class Counsel and granted final approval of wage and hour class action for, *inter alia*, off-the-clock work.)

i. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class Counsel and granted final approval of wage and hour class action for off-the-clock work.)

j. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)

k. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

l. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

m. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

n. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

o. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

p. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

q. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

r. *Moschetto v. Pillow Global, Inc.* San Diego Superior Court, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

s. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

t. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

u. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law

Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

v. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

w. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

x. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

y. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);

z. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

aa. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

56. Since 2010, my firm has successfully resolved more than sixty (65) cases and recovered in excess of \$75 million on behalf of the Firm’s clients.

57. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm’s clients.

58. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

59. Consequently, I was named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

1 I declare under the penalty of perjury under the laws of the State of California that the foregoing
2 is true and correct. Executed this 20th day of May 2022, at San Diego, California.

3 **JCL LAW FIRM, APC**

4 By: 
5 Jean-Claude Lapuyade
6 Attorneys for Plaintiff
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9
10
11
12
13
14



EXHIBIT 1

JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
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Attorneys for Plaintiff Cecille Sarmiento

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CECILLE SARMEINTO, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

PLAINTIFF,

vs.

CADUCEUS HEALTHCARE INC., a
corporation; and DOES 1 through 50,
Inclusive;

DEFENDANTS.

Case No. 37-2021-00002597-CU-OE-CTL

[Action Filed 01/20/2021]

**STIPULATION OF CLASS AND PAGA
ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

[IMAGED FILE]

Judge: Hon. Richard S. Whitney
Dept.: 68

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between plaintiff CECILLE SARMEINTO (hereinafter "Plaintiff"), individually and on behalf of others similarly situated, and defendant CADUCEUS HEALTHCARE, INC. (hereinafter "Defendant"):

A. **DEFINITIONS**

1. "Action" shall mean the putative class action and representative PAGA lawsuit designated *Sarmiento v. Caduceus Healthcare Inc.*, San Diego County Superior Court, Case No. 37-2021-00002597-CU-OE-CTL, filed January 20, 2021.
2. "Aggrieved Employees" shall mean all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period.
3. "Agreement" or "Settlement Agreement" means this Stipulation of Settlement of Class Action and Release of Claims.
4. "Class Counsel" shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and Norman B. Blumenthal, Esq. of Blumenthal Nordrehaug Bhowmik & De Blouw, LLP.
5. "Class Counsel Award" means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Action, consisting of attorneys' fees not to exceed one-third of the Gross Settlement Amount, currently estimated to be \$105,000 out of \$315,000 plus actual costs and expenses not to exceed \$15,000.00 subject to Court approval. Class Counsel's award for attorneys' fees will be divided equally between Class Counsel (70% to JCL Law Firm, APC and 30% to Blumenthal Nordrehaug Bhowmik & De Blouw, LLP).
6. "Class Data" means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full name; last known address; social security number; and start dates and

1 end dates of employment or the number of wage statements each Class Member
2 received during the Class Period and PAGA Period.

3 7. "Class Members" or the "Class" means all non-exempt employees who are or
4 previously were employed by Defendant in California during the Class Period.

5 8. "Class Period" means the period from January 20, 2017 to September 30, 2021.

6 9. "Class Representative Service Award" means the amount that the Court authorizes to
7 be paid to the Class Representative, in addition to her Individual Settlement Payment
8 and her pro-rata share of the PAGA Settlement Payment, in recognition of her efforts
9 and risks in assisting with the prosecution of the Action and in exchange for executing
10 a General Release of Defendant.

11 10. "Class Representative" or "Plaintiff" shall mean Plaintiff CECILLE SARMIENTO.

12 11. "Court" means the Superior Court for the State of California, County of San Diego
13 currently presiding over the Action.

14 12. "Defendant" shall mean CADUCEUS HEALTHCARE INC.,

15 13. "Effective Date" means the earliest date, following entry by the Court of an order and
16 judgment finally approving this Settlement, upon which one of the following have
17 occurred: (i) if no objection is filed to the Settlement and no objector appears at the
18 hearing on final approval, the date of the Court's entry of the order granting final
19 approval of the Settlement and judgment thereon, (ii) if an objection is filed to the
20 Settlement and/or an objector appears at the hearing on final approval, then the earlier
21 of the following: (a) if objections are overruled, and no appeal is taken, then the
22 expiration of all potential appeal periods without a filing of a notice of appeal of the
23 final approval order or judgment; (b) 20 calendar days after final affirmance of the
24 final approval order and judgment by an appellate court as a result of any appeal(s),
25 or (c) final dismissal or denial of all such appeals (including any petition for review,
26 rehearing, certiorari, etc.) such that the final approval order and judgment is no longer
27 subject to further judicial review.

- 1 14. “Funding Date” shall mean ten (10) business days after the Effective Date and is the
2 date Defendant transfers the Gross Settlement Amount into the QSF in accord with
3 the terms of this Agreement.
- 4 15. “Gross Settlement Amount” means the total sum of Three Hundred Fifteen Thousand
5 Dollars (\$315,000.00) to be paid by Defendant in full satisfaction of all Released
6 Class Claims and Released PAGA Claims, which includes the sum of the Individual
7 Settlement Payments, the Class Representative Service Award, the Class Counsel
8 Award, PAGA Settlement Payment, and the Settlement Administration Costs. The
9 employer’s share of payroll taxes as to the portion of Individual Settlement Payments
10 constituting wages shall be paid by Defendant separate from and in addition to the
11 Gross Settlement Amount. “Individual Settlement Payment” means the amount
12 payable from the Net Settlement Amount to each Settlement Class Member and
13 excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.
- 14 16. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount, less Class
15 Counsel Award, Class Representative Service Award, PAGA Settlement Payment,
16 and Settlement Administration Costs.
- 17 17. “Notice Packet” means the Class Notice to be provided to the Class Members by the
18 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
19 than formatting changes to facilitate printing by the Settlement Administrator).
- 20 18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
21 Labor Code § 2698 *et seq.*
- 22 19. “PAGA Payment Ratio” means the respective Workweeks during the PAGA Period
23 for each Aggrieved Employee divided by the sum-total of the Workweeks for all
24 Aggrieved Employees during the PAGA Period.
- 25 20. “PAGA Period” means the period of June 18, 2019 until September 30, 2021.
- 26 21. “PAGA Settlement Payment” shall mean Fifteen Thousand Dollars (\$15,000.00) to
27 be allocated from the Gross Settlement Amount, with 25% of the payment going to
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the Aggrieved Employees and 75% of the payment going to the Labor and Workforce Development Agency (“LWDA”). The amount of the PAGA Settlement Payment is subject to Court approval pursuant to California Labor Code section 2699(l). Any reallocation of the Gross Settlement Amount to increase the PAGA Settlement Payment will not constitute grounds by either party to void this Agreement, so long as the Gross Settlement Amount remains the same.

22. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

23. “Payment Ratio” means the respective Workweeks for each Class Member divided by the sum total Workweeks for all Class Members.

24. “Plaintiff” shall mean CECILLE SARMIENTO.

25. “Released Class Claims” means all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are asserted in the Action or based on the facts and theories pleaded in the operative complaint on file at the time of final approval, including but not limited to, Labor Code sections 201, 202, 203, 204(a), 210, 218.5, 226, 226.3, 226.7, 510, 512, 1194, 1197, 1197.1 and 2802, the applicable IWC Wage Orders and all equivalent claims and causes of action arising under the Fair Labor Standards Act (“FLSA”) at 29 U.S.C. § 201 *et seq.*, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period

26. “Released PAGA Claims” means all claims for penalties under PAGA, arising during the PAGA Period, which were alleged in the operative complaint at the time of final approval by Plaintiff in the Action and Plaintiff’s June 18, 2020 notice letter to the LWDA including, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,

1 Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title
2 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable
3 Industrial Welfare Commission Wage Order(s), and is therefore actionable under
4 California Labor Code section 2699.3 and any resulting claim for attorneys' fees and
5 costs under PAGA, which occurred during the PAGA Periods.

6 27. "Released Parties" shall include Defendant, including its predecessors, if any, as well
7 as each of its respective predecessors, successors, and all former, current, and future
8 related organizations, companies, divisions, subsidiaries, affiliates, its government
9 contracting agencies, contractors, subcontractors, hirers, joint employers and their
10 employees and representatives, the government agencies contracted with Defendant
11 related to the Class Members and their employees and representatives, insurers, and
12 parents, and collectively, their respective former, current and future directors,
13 officers, employees, agents, representatives, attorneys, fiduciaries, assigns, heirs,
14 executors, administrators, beneficiaries, insurers and trustees.

15 28. "Response Deadline" means the date forty-five (45) days after the Settlement
16 Administrator mails Notice Packets to Class Members and the last date on which
17 Class Members may submit written requests for exclusion or objections to the
18 Settlement.

19 29. "Request for Exclusion" means a timely letter submitted by a Class Member
20 indicating a request to be excluded from the Settlement. The Request for Exclusion
21 must: (a) clearly state that the Class Member does not wish to be included in the
22 Settlement; (b) set forth the name, address, telephone number and last four digits of
23 the Social Security Number of the Class Member requesting exclusion; (c) be signed
24 by the Class Member; (d) be returned by mail to the Settlement Administrator at the
25 specified address indicated in the Notice Packet; and (e) be postmarked on or before
26 the Response Deadline.

27 30. "Settlement" means the disposition of the Action pursuant to this Agreement.
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1 31. “Settlement Administrator” means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
2 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
3 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
4 Code section 468B and Treasury Regulation section 1.468B-1, into which the Gross
5 Settlement Amount is deposited for the purpose of resolving the claims of Settlement
6 Class Members and Aggrieved Employees. The Settlement Administrator shall
7 maintain the funds until distribution in an account(s) segregated from the assets of
8 Defendant and any person related to Defendant. ***Interest accrued on the Gross***
9 ***Settlement Amount, if any, shall be paid and distributed to the Settlement Class***
10 ***Members as part of their respective Individual Settlement Payment.***

11 32. “Settlement Administration Costs” means the fees and expenses reasonably incurred
12 by the Settlement Administrator as a result of the procedures and processes expressly
13 required by this Agreement. Any portion of the Settlement Administration Costs not
14 used or approved by the Court shall be added to the Net Settlement Amount. However,
15 the Parties hereby acknowledge that the Settlement Administration Costs may
16 increase above the current estimate of Fifteen Thousand Dollars (\$15,000.00) and that
17 any such additional Settlement Administration Costs that are approved by counsel for
18 the Parties shall be taken out of the Gross Settlement Amount. The Parties each
19 represent that they do not have any financial interest in the Settlement Administrator
20 or otherwise have a relationship with the Settlement Administrator that could create
21 a conflict of interest.

22 33. “Settlement Class Members” or “Settlement Class” means all Class Members who
23 have not submitted a timely and valid written request for exclusion as provided in this
24 Agreement.

25 34. “Workweeks”, for purposes of calculating the distribution of the Net Settlement
26 Amount, means the number of weeks of employment during the Class Period that
27 each Class Member was employed by Defendant in California, excluding weeks
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1 during which the Class Member did not perform any work for Defendant. For purpose
2 of determining the Individual Settlement Payments and the Settlement Allocation,
3 each Class Member who is a former employee no longer working for Defendant will
4 be assigned two (2) additional Workweeks.

5 **B. RECITALS**

- 6 1. On June 18, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce
7 Development Agency (LWDA) and served the same on Defendant.
- 8 2. On January 20, 2021, Plaintiff filed the Action for:
- 9 a. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq.*;
- 10 b. Failure to pay overtime wages in violation of California Labor Code sections
11 510 *et seq.*;
- 12 c. Failure to pay minimum wages in violation of California Labor Code sections
13 1194, 1197 and 1197.1;
- 14 d. Failure to provide required meal periods in violation of California Labor Code
15 sections 226.7 and 512 and the applicable IWC wage order;
- 16 e. Failure to provide required rest periods in violation of California Labor Code
17 sections 226.7 and 512 and the applicable IWC wage order;
- 18 f. Failure to provide accurate itemized wage statements in violation of California
19 Labor Code section 226;
- 20 g. Failure to reimburse employees for required expenses in violation of
21 California Labor Code section 2802;
- 22 h. Failure to provide wages when due in violation of California Labor Code
23 sections 201, 202 and 203;
- 24 i. Failure to timely pay earned wages in violation of Cal. Lab. Code § 204(a);
- 25 j. Wrongful termination in violation of public policy; and
- 26 k. Violation of the Private Attorneys General Act [Labor Code §§2698, *et seq.*].
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- 1 3. The Class Representative believes she has meritorious claims based on alleged
2 violations of the California Labor Code, and the Industrial Wage Commission Orders,
3 and that class certification is appropriate because the prerequisites for class
4 certification can be satisfied in the Action, and this action is manageable as a PAGA
5 representative action.
- 6 4. Defendant denies any liability or wrongdoing of any kind associated with the claims
7 alleged in the Action, disputes any wages, damages and penalties claimed by the Class
8 Representative are owed, and further contend that, for any purpose other than
9 settlement, the Action is not appropriate for class or representative action treatment.
10 Defendant contends, among other things, that at all times they complied with the
11 California Labor Code and the Industrial Wage Commission Orders.
- 12 5. The Class Representative is represented by Class Counsel. Class Counsel conducted
13 an investigation into the facts relevant to the Action, including conducting an
14 independent investigation as to the allegations, reviewing documents and information
15 exchanged through informal discovery, and reviewing documents and information
16 provided by Defendant pursuant to informal requests for information to prepare for
17 mediation. Defendant produced for the purpose of settlement negotiations certain
18 employment data concerning the Settlement Class, which Class Counsel reviewed
19 and analyzed. Based on their own independent investigation and evaluation, Class
20 Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and
21 adequate, and is in the best interest of the Settlement Class in light of all known facts
22 and circumstances, including the risks of significant delay, defenses asserted by
23 Defendant, uncertainties regarding class certification, and numerous potential
24 appellate issues. Although it denies any liability, Defendant is agreeing to this
25 Settlement solely to avoid the inconveniences and cost of further litigation. The
26 Parties and their counsel have agreed to settle the claims on the terms set forth in this
27 Agreement
- 28

6. On September 8, 2021, the Parties participated in mediation presided over by Hon. Steve Denton (Ret.) a respected jurist and mediator of wage and hour class actions. At the conclusion of the mediation, each side, represented by its respective counsel, agreed to settle the Action for to the total Gros Settlement amount of \$315,000. The Parties subsequently executed a binding and enforceable Memorandum of Agreement (“MOU”), and agreed that a detailed, long-form Joint Stipulation of Class and PAGA Action Settlement and Release of Claims would be completed shortly thereafter.

7. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representation between the Parties. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class Members have merit or that Defendant bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant’s defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the Settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

C. TERMS OF AGREEMENT

1. Settlement Consideration and Settlement Payments by Defendant.

a. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant and the Released Parties will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, equal to the Gross Settlement Amount of Three Hundred Fifteen Thousand Dollars

1 (\$315,000.00). The Parties agree that this is a non-reversionary Settlement and
2 that no portion of the Gross Settlement Amount shall revert to Defendant.
3 Other than the Defendant's share of employer payroll taxes on the portion of
4 the Individual Settlement Payments constituting wages, Defendant shall not
5 be required to pay more or less than the Gross Settlement Amount, except as
6 provided for hereinbelow.

7 b. Class Size. At the time of mediation, Defendant estimated that the Settlement
8 Class was comprised of 115 individuals who collectively worked
9 approximately 3,300 Workweeks ("Projected Workweeks"). In regard hereto,
10 Defendant will provide a declaration under penalty of perjury confirming the
11 number of Class Members and Workweeks during the Class Period. The
12 Settlement Amount will increase proportionally above 10% (e.g. if the
13 Workweeks increase by 12%, Defendant shall pay an additional 2%) with
14 added Workweeks if any of these are more than 10% of the estimates set forth
15 herein.

16 c. Settlement Payment. Defendant and the Released Parties, and each of them,
17 are jointly and severally liable for payment of the Gross Settlement Amount
18 Defendant shall pay, via wire transfer, the Gross Settlement Amount to the
19 Settlement Administrator on the Funding Date.

20 d. Defendant's Share of Payroll Taxes. Defendant's share of employer side
21 payroll taxes on the portion of the Individual Settlement Payments
22 constituting wages are in addition to the Gross Settlement Amount and shall
23 be paid together with the Gross Settlement Amount.

24 2. Release by Settlement Class Members. As of the Funding Date, in exchange for the
25 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
26 release the Released Parties from the Released Class Claims for the Class Period.
27
28

- 1 3. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, the Plaintiff, the Aggrieved Employees, the
3 LWDA, and the State of California release the Released Parties from the Released
4 PAGA Claims for the PAGA Period.
- 5 4. Conditions Precedent: This Settlement will become final and effective only upon the
6 occurrence of all of the following events:
- 7 a. The Court enters an order granting preliminary approval of the Settlement;
- 8 b. The Court enters an order granting final approval of the Settlement and a Final
9 Judgment;
- 10 c. If an objector appears at the final approval hearing, the time for appeal of the
11 Order Granting Final Approval of Class Action Settlement and Final
12 Judgment expires; or, if an appeal is timely filed, there is a final resolution of
13 any appeal from the Order Granting Final Approval of Class Action
14 Settlement and Final Judgment; and
- 15 d. Defendant fully funds the Gross Settlement Amount.
- 16 5. Defendant's Right to Rescind. If more than ten percent (10%) of the Class Members
17 opt out of the settlement by submitting valid and timely Requests for Exclusion,
18 Defendant has the unilateral right in its sole discretion to rescind the Parties'
19 Settlement. The Parties agree that they will not encourage any Class Member to object
20 to the Settlement or to opt out. If Defendant exercises its option to rescind, Defendant
21 shall: (a) provide written notice to Class Counsel at least ten (10) business days prior
22 to the final approval hearing, provided Defendant has been provided notice of all such
23 opt outs, and (b) pay all Settlement Administration Costs incurred by the Settlement
24 Administrator up to the date of Defendant's notice to rescind. In the event the
25 Settlement is terminated, the Parties shall proceed in all respects as if this Agreement
26 had not been executed.

1 6. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
2 not preliminarily or finally approved by the Court, fails to become effective, or is
3 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
4 Defendant from obtaining a complete resolution of the Released Claims and Released
5 PAGA Claims, or if Defendant fails to fully fund the Gross Settlement Amount:

6 a. This Settlement Agreement shall be void *ab initio* and of no force or effect,
7 and shall not be admissible in any judicial, administrative or arbitral
8 proceeding for any purpose or with respect to any issue, substantive or
9 procedural;

10 b. The conditional class certification (obtained for any purpose) shall be void *ab*
11 *initio* and of no force or effect, and shall not be admissible in any judicial,
12 administrative or arbitral proceeding for any purpose or with respect to any
13 issue, substantive or procedural; and

14 c. None of the Parties to this Settlement will be deemed to have waived any
15 claims, objections, defenses or arguments in the Action, including with respect
16 to the issue of class certification.

17 d. Defendant shall bear the sole responsibility for any cost to issue or reissue any
18 curative notice to the Settlement Class Members and all Settlement
19 Administration Costs incurred to the date of nullification.

20 7. Certification of the Settlement Class. The Parties stipulate to conditional class
21 certification of the Class for the Class Period for purposes of settlement only. In the
22 event that this Settlement is not approved by the Court, fails to become effective, or is
23 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
24 Defendant from obtaining a complete resolution of the Released Claims and Released
25 PAGA Claims, the conditional class certification (obtained for any purpose) shall be
26 void *ab initio* and of no force or effect, shall not be admissible in any judicial,
27 administrative or arbitral proceeding for any purpose or with respect to any issue,
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substantive or procedural, and Defendant will not be prevented from later contesting class certification.

8. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement Payment described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement Payment.

9. Circular 230 Disclaimer. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the Released Claims, the conditional class certification (obtained for any purpose) shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

10. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR

1 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
2 her or its own, independent legal and tax counsel for advice (including tax advice) in
3 connection with this Agreement, (b) has not entered into this Agreement based upon
4 the recommendation of any other Party or any attorney or advisor to any other Party,
5 and (c) is not entitled to rely upon any communication or disclosure by any attorney
6 or adviser to any other party to avoid any tax penalty that may be imposed on the
7 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
8 any limitation that protects the confidentiality of any such attorney's or adviser's tax
9 strategies (regardless of whether such limitation is legally binding) upon disclosure by
10 the acknowledging party of the tax treatment or tax structure of any transaction,
11 including any transaction contemplated by this Agreement

12 11. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
13 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
14 which shall include this Settlement Agreement. Plaintiff will provide Defendant with
15 a draft of the Motion at least 3 business days prior to the filing of the Motion to give
16 Defendant an opportunity to propose changes or additions to the Motion.

17 12. Settlement Administrator. The Settlement Administrator shall be responsible for:
18 establishing and administering the QSF; calculating, processing and mailing payments
19 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
20 mailing the Notice Packets to the Class Members as directed by the Court; receiving
21 and reporting the objections and requests for exclusion; calculating, deducting and
22 remitting all legally required taxes from Individual Settlement Payments and
23 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
24 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA
25 Settlement Payment; processing and mailing tax payments to the appropriate state and
26 federal taxing authorities; providing declaration(s) as necessary in support of
27 preliminary and/or final approval of this Settlement; and other tasks as the Parties
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1 mutually agree or the Court orders the Settlement Administrator to perform. The
2 Settlement Administrator shall keep the Parties timely apprised of the performance of
3 all Settlement Administrator responsibilities by among other things, sending a weekly
4 status report to the Parties' counsel stating the date of the mailing, the number of
5 written requests for exclusion it receives (including the numbers of valid and
6 deficient), and number of objections received.

7 13. Notice Procedure.

8 a. Class Data. No later than ten (10) business days after the Preliminary
9 Approval Date, Defendant shall provide the Settlement Administrator with the
10 Class Data for purposes of preparing and mailing Notice Packets to the Class
11 Members.

12 b. Notice Packets.

13 1) The Notice Packet shall contain the Notice of Class Action Settlement
14 in a form substantially similar to the form attached as Exhibit A. The
15 Notice of Class Action Settlement shall inform Class Members and
16 Aggrieved Employees that they need not do anything in order to
17 receive an Individual Settlement Payment and/or Aggrieved
18 Employees' individual shares of the PAGA Settlement Payment and
19 to keep the Settlement Administrator apprised of their current mailing
20 address, to which the Individual Settlement Payments and/or
21 Aggrieved Employees' individual shares of the PAGA Settlement
22 Payment will be mailed following the Funding Date. The Notice of
23 Class Action Settlement shall set forth the release to be given by all
24 members of the Class who do not request to be excluded from the
25 Settlement Class and/or Aggrieved Employees' in exchange for an
26 Individual Settlement Payment and/or Aggrieved Employees'
27 individual shares of the PAGA Settlement Payment, the number of
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1 Workweeks worked by each Class Member during the Class Period
2 and PAGA Period, if any, and the estimated amount of their Individual
3 Settlement Payment if they do not request to be excluded from the
4 Settlement and each Aggrieved Employee's share of the PAGA
5 Settlement, if any. The Settlement Administrator shall use the Class
6 Data to determine Class Members' Workweeks and PAGA
7 Workweeks. The Notice will also advise the Aggrieved Employees
8 that they will release the Released PAGA Claims and will receive their
9 share of the PAGA Settlement regardless of whether they request to
10 be excluded from the Settlement.

11 2) The Notice Packet's mailing envelope shall include the following
12 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
13 ENTITLED TO PARTICIPATE IN A CLASS ACTION
14 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
15 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
16 NOTICE."

17 c. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
18 the Settlement Administrator will perform a search based on the National
19 Change of Address Database to update and correct any known or identifiable
20 address changes. No later than fourteen (14) calendar days after receiving the
21 Class Data from Defendant, the Settlement Administrator shall mail and email
22 copies of the Notice Packet to all Class Members via regular First-Class U.S.
23 Mail and electronic mail. The Settlement Administrator shall exercise its best
24 judgment to determine the current mailing address for each Class Member.
25 The address identified by the Settlement Administrator as the current mailing
26 address shall be presumed to be the best mailing address for each Class
27 Member.
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- 1 d. Undeliverable Notices. Any Notice Packets returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be
3 re-mailed to any forwarding address provided. If no forwarding address is
4 provided, the Settlement Administrator shall promptly attempt to determine a
5 correct address by lawful use of skip-tracing, or other search using the name,
6 address and/or Social Security number of the Class Member involved, and
7 shall then perform a re-mailing, if another mailing address is identified by the
8 Settlement Administrator. In addition, if any Notice Packets, which are
9 addressed to Class Members who are currently employed by Defendant, are
10 returned to the Settlement Administrator as non-delivered and no forwarding
11 address is provided, the Settlement Administrator shall notify Defendant.
12 Defendant will request that the currently employed Class Member provide a
13 corrected address, and transmit to the Administrator any corrected address
14 provided by the Class Member. Class Members who received a re-mailed
15 Notice Packet shall have their Response Deadline extended fifteen (15) days
16 from the original Response Deadline.
- 17 e. Disputes Regarding Individual Settlement Payments. Class Members will
18 have the opportunity, should they disagree with Defendant's records regarding
19 the start and end dates of employment, to provide documentation and/or an
20 explanation to show contrary dates. If there is a dispute, the Settlement
21 Administrator will consult with the Parties to determine whether an
22 adjustment is warranted. The Settlement Administrator shall determine the
23 eligibility for, and the amounts of, any Individual Settlement Payments under
24 the terms of this Agreement. The Settlement Administrator's determination
25 of the eligibility for and amount of any Individual Settlement Payment shall
26 be binding upon the Class Member and the Parties.

1 f. Disputes Regarding Administration of Settlement. Any disputes not resolved
2 by the Settlement Administrator concerning the administration of the
3 Settlement will be resolved by the Court under the laws of the State of
4 California. Before any such involvement of the Court, counsel for the Parties
5 will confer in good faith to resolve the disputes without the necessity of
6 involving the Court.

7 g. Exclusions. The Notice of Class Action Settlement contained in the Notice
8 Packet shall state that Class Members who wish to exclude themselves from
9 the Settlement must submit a written request for exclusion by the Response
10 Deadline. The written request for exclusion must state that the Class Member
11 wishes to exclude himself or herself from the Settlement and (1) must contain
12 the name, address, and the last four digits of the Social Security number of the
13 person requesting exclusion; (2) must be signed by the Class Member; (3)
14 must be postmarked or fax stamped by the Response Deadline and returned to
15 the Settlement Administrator at the specified address or fax telephone number;
16 and (4) contain a typewritten or handwritten notice stating in substance: "I
17 have read the Class Notice and I wish to opt out of the settlement of the class
18 action lawsuit entitled *Cecille Sarmiento, et al. v. Caduceus Healthcare, Inc.*,
19 currently pending in the Superior Court for the County of San Diego, Case
20 No. 37-2021-00002597-CU-OE-CTL. I understand that by requesting to be
21 excluded from the settlement, I will receive no money from the Settlement
22 described in this Notice." The request for exclusion will not be valid if it is
23 not timely submitted, if it is not signed by the Class Member, or if it does not
24 contain the name and address and last four digits of the Social Security number
25 of the Class Member. The date of the postmark on the mailing envelope or
26 fax stamp on the request for exclusion shall be the exclusive means used to
27 determine whether the request for exclusion was timely submitted. Any Class
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1 Member who requests to be excluded from the Settlement Class will not be
2 entitled to an Individual Settlement Payment and will not be otherwise bound
3 by the terms of the Settlement or have any right to object, appeal or comment
4 thereon. However, any Class Member that submits a timely request for
5 exclusion that is also a member of the Aggrieved Employees will still receive
6 his/her pro rata share of the PAGA Settlement, as specified below, and in
7 consideration, will be bound by the Release by the Aggrieved Employees as
8 set forth herein. Settlement Class Members who fail to submit a valid and
9 timely written request for exclusion on or before the Response Deadline shall
10 be bound by all terms of the Settlement and any final judgment entered in this
11 Action if the Settlement is approved by the Court. No later than fourteen (14)
12 calendar days after the Response Deadline, the Settlement Administrator shall
13 provide counsel for the Parties with a final list of the Class Members who have
14 timely submitted written requests for exclusion. At no time shall any of the
15 Parties or their counsel seek to solicit or otherwise encourage members of the
16 Class to submit requests for exclusion from the Settlement.

- 17 h. Objections. The Notice of Class Action Settlement contained in the Notice
18 Packet shall state that Class Members who wish to object to the Settlement
19 may submit to the Settlement Administrator a written statement of objection
20 by the Response Deadline. The postmark date of mailing shall be deemed the
21 exclusive means for determining that a written objection was served timely.
22 The written objection must be signed by the Settlement Class Member and
23 state: (1) the case name and number; (2) the name of the Settlement Class
24 Member; (3) the address of the Settlement Class Member; (4) the last four
25 digits of the Settlement Class Member's Social Security number; (5) the basis
26 for the objection; and (6) if the Settlement Class Member intends to appear at
27 the Final Approval/Settlement Fairness Hearing. Class Members who fail to
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1 make objections in writing in the manner specified above may still make their
2 objections orally at the Final Approval/Settlement Fairness Hearing with the
3 Court's permission. Settlement Class Members will have a right to appear at
4 the Final Approval/Settlement Fairness Hearing to have their objections heard
5 by the Court. At no time shall any of the Parties or their counsel seek to solicit
6 or otherwise encourage Class Members to file or serve written objections to
7 the Settlement or appeal from the Order Granting Final Approval of the
8 Settlement and Final Judgment. Class Members who submit a written request
9 for exclusion may not object to the Settlement. Class Members may not object
10 to the PAGA Settlement.

- 11 14. Funding and Allocation of the Gross Settlement Amount. Defendant is required to pay
12 the Gross Settlement Amount on or before the Funding Date, plus any employer's
13 share of payroll taxes on the portion of the Individual Settlement Payments constituting
14 wages as mandated by law within the time specified herein. The QSF shall be an
15 interest-bearing account at a federally-insured bank that is mutually acceptable to the
16 Parties and the Settlement Administrator. The funds in the QSF shall be invested either
17 in short-term U.S. Treasury securities with maturity dates of less than 90 days at the
18 time of deposit, or in an SEC-registered money market fund investing exclusively in
19 U.S. Treasury securities with average maturities of less than 90 days and rated AAA
20 by Standard & Poor's. The Parties agree that the QSF is intended to be a "Qualified
21 Settlement Fund" under Section 468B of the Internal Revenue Code and Treas. Reg. §
22 1.468B-1, 26 C.F.R. § 1.468B-1, et seq., and will be administered by the Settlement
23 Administrator as such. With respect to the QSF, the Settlement Administrator shall:
24 (1) open and administer the settlement account in such a manner as to qualify and
25 maintain the qualification of the QSF2) satisfy all federal, state and local and income
26 and other tax reporting, return, and filing requirements with respect to the QSF and
27 any interest or other income earned by the QSF, and (3) satisfy out of the QSF all (i)
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1 taxes (including any estimated taxes, interest, or penalties) with respect to the interest
2 or other interest earned by the QSF, and (ii) fees, expenses and costs incurred in
3 connection with the opening and administration of the QSF and the performance of its
4 duties and functions as described in this Agreement. The aforementioned taxes, fees,
5 costs and expenses shall be treated as and included in the costs of administering the
6 QSF and as Settlement Administration Costs. The Parties and the Settlement
7 Administrator shall treat the QSF as coming into existence as a QSF on the earliest
8 date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election statement
9 shall be attached to the appropriate returns as required by 26 C.F.R. § 1.468B-
10 1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator and one
11 another to the extent reasonably necessary to carry out the provisions of this Section.

- 12 a. Calculation of Individual Settlement Payments. Individual Settlement
13 Payments shall be paid from the Net Settlement Amount and shall be paid
14 pursuant to the formula set forth herein. Using the Class Data, the Settlement
15 Administrator shall add up the total number of Workweeks for all Class
16 Members. The respective Workweeks for each Class Member will be divided
17 by the total Workweeks for all Class Members, resulting in the Payment Ratio
18 for each Class Member. Each Class Member's Payment Ratio will then be
19 multiplied by the Net Settlement Amount to calculate each Class Member's
20 estimated Individual Settlement Payment. Each Individual Settlement
21 Payment will be reduced by any legally mandated employee tax withholdings
22 (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated
23 to Class Members who submit valid and timely requests for exclusion will be
24 redistributed to Settlement Class Members who do not submit valid and timely
25 requests for exclusion on a pro rata basis based on their respective Payment
26 Ratios.

- 1 b. Calculation of Individual Payments to the Aggrieved Employees. Using the
2 Class Data, the Settlement Administrator shall add up the total number of
3 PAGA Workweeks for all Aggrieved Employees during the PAGA Period.
4 The respective PAGA Workweeks for each Aggrieved Employee will be
5 divided by the total PAGA Workweeks for all Aggrieved Employees,
6 resulting in the “PAGA Payment Ratio” for each Aggrieved Employee. Each
7 Aggrieved Employee’s PAGA Payment Ratio will then be multiplied by the
8 Aggrieved Employee Payment (as defined in Section 14.k. herein) to calculate
9 each Aggrieved Employee’s estimated share of the PAGA Settlement
10 Payment.
- 11 c. Allocation of Individual Settlement Payments. For tax purposes, Individual
12 Settlement Payments shall be allocated and treated as follows: 20% as wages
13 (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The
14 Wage Portion is subject to payroll tax withholdings and shall be reported on
15 IRS Form W-2. The Non-Wage Portion shall not be subject to payroll tax
16 withholdings and shall be reported on IRS Form 1099.
- 17 d. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved
18 Employee Payments (as defined in Section 14.k. herein) shall be allocated and
19 treated as 100% penalties and shall be reported on IRS Form 1099.
- 20 e. No Credit Toward Benefit Plans. The Individual Settlement Payments and
21 individual shares of the PAGA Settlement Payment made to Settlement Class
22 Members and/or Aggrieved Employees under this Settlement Agreement, as
23 well as any other payments made pursuant to this Settlement Agreement, will
24 not be utilized to calculate any additional benefits under any benefit plans to
25 which any Class Members may be eligible, including, but not limited to profit-
26 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,
27 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the
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1 Parties' intention that this Settlement Agreement will not affect any rights,
2 contributions, or amounts to which any Class Members may be entitled under
3 any benefit plans.

4 f. Treatment of Payments to Class Members. All monies received by Settlement
5 Class Members under the Settlement which are attributable to wages shall
6 constitute income to such Settlement Class Members solely in the year in which
7 such monies actually are received by the Settlement Class Members. It is the
8 intent of the Parties that Individual Settlement Payments and individual shares
9 of the PAGA Settlement Payment provided for in this Settlement agreement are
10 the sole payments to be made by Defendant to Settlement Class Members and/or
11 Aggrieved Employees in connection with this Settlement Agreement, with the
12 exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved
13 Employees are not entitled to any new or additional compensation or benefits as
14 a result of having received the Individual Settlement Payments and/or their
15 shares of the PAGA Settlement Payment.

16 g. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
17 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
18 and/or Aggrieved Employees last known mailing address no later than fifteen
19 (15) calendar days after the Funding Date.

20 h. Expiration. Any checks issued to Settlement Class Members and Aggrieved
21 Employees shall remain valid and negotiable for one hundred and eighty (180)
22 days from the date of their issuance. If a Settlement Class Member and/or
23 Aggrieved Employee does not cash his or her settlement check within 90 days,
24 the Settlement Administrator will send a letter to such persons, advising that
25 the check will expire after the 180th day, and invite that Settlement Class
26 Member and/or Aggrieved Employee to request reissuance in the event the
27 check was destroyed, lost or misplaced. In the event an Individual Settlement
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1 Payment and/or Aggrieved Employee's individual share of the PAGA
2 Settlement check has not been cashed within one hundred and eighty (180)
3 days, all funds represented by such uncashed checks, plus any interest accrued
4 thereon, shall be distributed consistent with California Code of Civil
5 Procedure Section 384 as follows: to The Children's Advocacy Institute
6 (CAI), founded at the nonprofit University of San Diego School of Law in
7 1989. Neither Class Counsel nor Defendant's counsel, nor any of the Parties,
8 has any interest, pecuniary or otherwise, in CAI. The court shall set a date
9 when the parties shall report to the court the total amount that was actually
10 paid to the Class Members. After the report is received, the court shall amend
11 the judgment to direct the Settlement Administrator to pay the sum of the
12 unpaid residue as a result of uncashed Class Member checks, plus interest that
13 has accrued thereon, to the CAI. Neither Class Counsel nor Defense Counsel
14 or the Parties have any interest, pecuniary or otherwise, in the CAI.

- 15 i. Class Representative Service Award. In addition to the Individual Settlement
16 Payment and her individual share of the PAGA Settlement Payment to be paid
17 to Plaintiff, Plaintiff will apply to the Court for an award of not more than
18 \$7,500, as the Class Representative Service Award. Defendant does not
19 presently intend to oppose a Class Representative Service Award of not more
20 than \$7,500 for Plaintiff. The Settlement Administrator shall pay the Class
21 Representative Service Award, either in the amount stated herein if approved
22 by the Court or some other amount as approved by the Court, to Plaintiff from
23 the Gross Settlement Amount no later than fifteen (15) calendar days after the
24 Funding Date. Any portion of the requested Class Representative Service
25 Award that is not awarded to the Class Representative shall be part of the Net
26 Settlement Amount and shall be distributed to Settlement Class Members as
27 provided in this Agreement. The Settlement Administrator shall issue an IRS
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1 Form 1099 — MISC to Plaintiff for her Class Representative Service Award.
2 Plaintiff shall be solely and legally responsible to pay any and all applicable
3 taxes on her Class Representative Service Award and shall hold harmless the
4 Released Parties from any claim or liability for taxes, penalties, or interest
5 arising as a result of the Class Representative Service Award. The Class
6 Representative Service Award shall be in addition to Plaintiff's Individual
7 Settlement Payment as a Settlement Class Member. Approval of this
8 Settlement shall not be conditioned on Court approval of the requested amount
9 of the Class Representative Service Award. In the event that the Court reduces
10 or does not approve the requested Class Representative Service Award,
11 Plaintiff shall not have the right to revoke the Settlement, and it will remain
12 binding.

13 j. Class Counsel Award. Defendant understands a motion by Class Counsel for
14 attorneys' fees not to exceed one-third of the Gross Settlement Amount
15 currently estimated to be \$105,000.00 plus actual costs and expenses
16 supported by declaration not to exceed Fifteen Thousand Dollars
17 (\$15,000.00), from the Gross Settlement Amount will be filed. Any portion
18 of the requested Class Counsel Award that is not awarded to Class Counsel
19 shall be part of the Net Settlement Amount and shall be distributed to
20 Settlement Class Members as provided in this Agreement. The Settlement
21 Administrator shall allocate and pay the Class Counsel Award to Class
22 Counsel from the Gross Settlement Amount no later than fifteen (15) calendar
23 days after the Funding Date. Class Counsel shall be solely and legally
24 responsible to pay all applicable taxes on the payment made pursuant to this
25 paragraph. The Settlement Administrator shall issue an IRS Form 1099 —
26 MISC to Class Counsel for the payments made pursuant to this paragraph. In
27 the event that the Court reduces or does not approve the requested Class
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1 Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke
2 the Settlement, or to appeal such order, and the Settlement will remain
3 binding.

4 k. PAGA Settlement Payment. Fifteen Thousand Dollars (\$15,000) shall be
5 allocated from the Gross Settlement Amount for settlement of claims for civil
6 penalties under the Labor Code Private Attorneys General Act of 2004 (i.e.,
7 the "PAGA Settlement Payment"). The Settlement Administrator shall pay
8 seventy-five percent (75%) of the PAGA Settlement Payment (\$11,250) to the
9 California Labor and Workforce Development Agency no later than fifteen
10 (15) calendar days after the Funding Date (hereinafter "LWDA Payment").
11 Twenty-five (25%) of the PAGA Settlement (\$3,750) will be distributed to
12 the Aggrieved Employees as described in this Agreement ("Aggrieved
13 Employee Payment"). For purposes of distributing the PAGA Settlement to
14 the Aggrieved Employees, each Aggrieved Employee shall receive their pro-
15 rata share of the Aggrieved Employee Payment using the PAGA Payment
16 Ratio as defined above.

17 l. Settlement Administration Costs. The Settlement Administrator shall be paid
18 for the costs of administration of the Settlement from the Gross Settlement
19 Amount. The estimate of the Settlement Administration Costs is \$15,000. The
20 Settlement Administrator shall be paid the Settlement Administration Costs
21 no later than twenty-five (25) calendar days after the Funding Date. These
22 costs, which shall be paid from the Gross Settlement Amount, shall include,
23 inter alia, the required tax reporting on the Individual Settlement Payments,
24 the issuing of 1099 IRS Forms, establishing a Qualified Settlement Fund,
25 administering and distributing the Gross Settlement Amount and Class
26 Counsel Award, and providing necessary reports and declarations. Any
27 portion of the Settlement Administration Costs not allowed shall be added to
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1 the Net Settlement Amount and shall be distributed to Class Members as
2 provided in this Agreement.

3 15. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
4 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
5 twenty-eight (28) days following the expiration of the Response Deadline, which
6 motion shall request final approval of the Settlement and a determination of the
7 amounts payable for the Class Representative Service Award, the Class Counsel
8 Award, the PAGA Settlement Payment, and the Settlement Administration Costs.
9 Plaintiff will provide Defendant with a draft of the Motion at least 3 business days
10 prior to the filing of the Motion to give Defendant an opportunity to propose changes
11 or additions to the Motion.

12 a. Declaration by Settlement Administrator. No later than fourteen (14) days
13 after the Response Deadline, the Settlement Administrator shall submit a
14 declaration in support of Plaintiff's motion for final approval of this
15 Settlement detailing the number of Notice Packets mailed and re-mailed to
16 Class Members, the number of undeliverable Notice Packets, the number of
17 timely requests for exclusion, the number of objections received, the amount
18 of the average Individual Settlement Payment and highest Individual
19 Settlement Payment, the Settlement Administration Costs, and any other
20 information as the Parties mutually agree or the Court orders the Settlement
21 Administrator to provide.

22 b. Final Approval Order and Judgment. Class Counsel shall present an Order
23 Granting Final Approval of Class Action Settlement to the Court for its
24 approval, and Judgment thereon, at the time Class Counsel files the Motion
25 for Final Approval. After entry of the Judgment, the Settlement Administrator
26 will provide notice of the final judgment to the Class Members by posting the
27 Judgment on the administrator's website.
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- 1 18. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
2 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
3 Final Approval, including the Order Granting Final Approval of Class Action
4 Settlement, and Judgment, at least five (5) court days before filing with the Court.
5 The Parties and their counsel will cooperate with each other and use their best efforts
6 to affect the Court's approval of the Motions for Preliminary and Final Approval of
7 the Settlement, and entry of Judgment.
- 8 19. Cooperation. The Parties and their counsel will cooperate with each other and use
9 their best efforts to implement the Settlement.
- 10 20. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
11 except such proceedings necessary to implement and complete the Settlement, pending
12 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
- 13 21. Amendment or Modification. This Agreement may be amended or modified only by
14 a written instrument signed by counsel for all Parties or their successors-in-interest.
- 15 22. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
16 Agreement among these Parties, and no oral or written representations, warranties or
17 inducements have been made to any Party concerning this Agreement or its Exhibits
18 other than the representations, warranties and covenants contained and memorialized
19 in this Agreement and its Exhibit.
- 20 23. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
21 represent they are expressly authorized by the Parties whom they represent to negotiate
22 this Agreement and to take all appropriate Action required or permitted to be taken by
23 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
24 documents required to effectuate the terms of this Agreement. The persons signing this
25 Agreement on behalf of Defendant represents and warrants that he/she is authorized to
26 sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that she
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1 is authorized to sign this Agreement and that she has not assigned any claim, or part
2 of a claim, covered by this Settlement to a third-party.

3 24. No Public Comment: The Parties and their counsel agree that they will not issue any
4 press releases, initiate any contact with the press, respond to any press inquiry, or have
5 any communication with the press about the fact, amount or terms of the Settlement
6 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
7 of its terms for any marketing or promotional purposes. Nothing herein will restrict
8 Class Counsel from including publicly available information regarding this settlement
9 in future judicial submissions regarding Class Counsel's qualifications and experience.
10 Further, Class Counsel will not include, reference or use the Settlement Agreement for
11 any marketing or promotional purposes, including publishing such information on any
12 website or social media forum (including through organizations that publicize verdicts
13 and settlements and on websites operated by or for Class Counsel), or for attempting
14 to influence business relationships at Defendant's locations, either before or after the
15 Motion for Preliminary Approval is filed.

16 25. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
17 to the benefit of, the successors or assigns of the Parties, as previously defined.

18 26. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
19 shall be governed by and interpreted according to the laws of the State of California.

20 27. Counterparts. This Agreement may be executed in one or more counterparts. All
21 executed counterparts and each of them shall be deemed to be one and the same
22 instrument provided that counsel for the Parties to this Agreement shall exchange
23 among themselves copies or originals of the signed counterparts.

24 28. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
25 is a fair, adequate and reasonable settlement of this Action and have arrived at this
26 Settlement after extensive arms-length negotiations, taking into account all relevant
27 factors, present and potential.

- 1 29. Jurisdiction of the Court. The Parties agree that this Settlement Agreement shall be
2 enforceable by the Court pursuant to California Code of Civil Procedure Section 664.6.
3 The Parties agree that the Court shall retain jurisdiction with respect to the
4 interpretation, implementation and enforcement of the terms of this Agreement and all
5 orders and judgments entered in connection therewith, and the Parties and their counsel
6 submit to the jurisdiction of the Court for purposes of interpreting, implementing and
7 enforcing the settlement and all orders and judgments entered in connection with this
8 Agreement.
- 9 30. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
10 the Court shall first attempt to construe the provisions valid to the fullest extent
11 possible consistent with applicable precedents so as to define all provisions of this
12 Agreement valid and enforceable.
- 13 31. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
14 intend to pursue any claims against the Released Parties, including, but not limited to,
15 any and all claims relating to or arising from Plaintiff's employment with Defendant,
16 regardless of whether Class Counsel is currently aware of any facts or legal theories
17 upon which any claims or causes of action could be brought against Released Parties,
18 including those facts or legal theories alleged in the operative complaint in this Action.
19 The Parties further acknowledge, understand and agree that this representation is
20 essential to the Agreement and that this Agreement would not have been entered into
21 were it not for this representation.
- 22 32. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
23 Plaintiff or Class Counsel may appeal any reduction in the Class Counsel Award below
24 the amount Class Counsel requests, and either Party may appeal any order that
25 materially alters the Agreement's terms.
- 26 33. Class Action Certification. The Parties are agreeing to class certification for settlement
27 purposes only. This Agreement shall not constitute, in this or any other proceeding, an
28

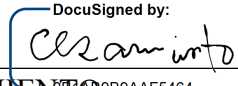
admission of any kind by Defendant, including without limitation, that certification of a class for trial or any other purpose is appropriate or proper or that Plaintiff or any Class Member can establish any of the requisite elements for class treatment of any of the claims in this Action. If, for any reason, the Settlement is not finally approved, this Agreement will be void and the Parties will be restored to their respective positions in the lawsuit as if they had not entered into this Agreement. The Parties further agree that this Agreement, the final stipulation of Settlement, or any documents or orders issued related to this Settlement will not be admissible, other than according to the Settlement's terms, in this or any other proceeding as evidence that either: (i) a class action should be certified, or (ii) Defendant is liable to Plaintiff or any Class Member.

34. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendant. Defendant claims that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

[SIGNATURES ON FOLLOWIUNG PAGE]

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 2/14/2022

DocuSigned by:

CECILLE SARMIENTO

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANTS:

DATED:


CADUCEUS HEALTHCARE, INC.

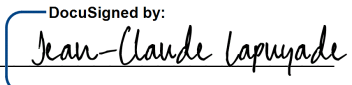
Carlos Lopez
Printed Name

CEO - President
Title

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 2/17/2022

JCL LAW FIRM, A.P.C.

By: 
Attorneys for Plaintiff and the Settlement Class Members

DATED: 2/17/2022

FREEMAN MATHIS & GARY, LLP

By: 
Mandy D. Hexom
Attorneys for Defendant
CADUCEUS HEALTHCARE, INC.

4828-2706-0977, v. 1

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

*(Sarmiento v. Caduceus Healthcare, Inc., San Diego County Superior Court Case
No. 37-2021-00002597-CU-OE-CTL)*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<<[REDACTED]>>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Diego (the “Court”) has been reached between Plaintiff Cecille Sarmiento (“Plaintiff”) and Defendant Caduceus Healthcare, Inc., (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All non-exempt employees who are or previously were employed by Defendant in California during the Class Period.

The “Class Period” is the period of time running from January 20, 2017 to September 30, 2021.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On January 20, 2021, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Diego. Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (c) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802; (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; (i) Failure to timely pay earned wages in violation of California Labor Code § 204(a); (j) Wrongful Termination in violation of Public Policy; and (k) Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.*

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant reimbursed Defendant for required business expenses, that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Actions.

On September 8, 2021, the Parties participated in an all-day mediation with Hon. Steven Denton (Ret.), a respected jurist and experienced mediator of wage and hour class and PAGA actions. At the conclusion of the mediation, each side, represented by its respective counsel, agreed to settle the Action. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Three Hundred Fifteen Thousand Dollars (\$315,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Settlement Shares to Participating Class Members, Class Counsel’s attorneys’ fees and costs, Settlement Administration Expenses, the LWDA Payment, PAGA Shares, and the Class Representative Service Payment to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$15,000.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.

- Attorneys' Fees and Costs. Payment to Class Counsel of an award of a Class Counsel Fees Payment of no more than 1/3 of the Gross Settlement Amount (currently \$105,000) and a Class Counsel Litigation Expenses Payment of not more than \$15,000 for all expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Actions on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payment. Class Representative Service Payment of up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Payment. A payment of \$15,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$11,250 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") and the remaining \$3,750 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Class Representative Service Payments, the LWDA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Settlement Share for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Penalties Payments to PAGA Employees. The Net PAGA Amount shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all non-exempt employees who are or previously were employed by Defendant in California during the PAGA Period. The PAGA Period means the period between June 18, 2019 to September 30, 2021.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. 20% of each Settlement Share is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. 80% of each Settlement Share is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are asserted in the Action or based on the facts and theories pleaded in the operative complaint on file at the time of final approval, including but not limited to, labor Code sections 201, 202, 203, 204(a), 210, 218.5, 225, 226.3, 226.7, 510, 512, 1194, 1197, 1197.1, and 2802, the applicable IWC WAGE Orders and all equivalent claims and causes of actions arising under the Fair Labor Standards Act (“FLSA”) at 29 U.S.C. § et seq., which occurred during the Class Period, and expressly excluding all other claims, including claims of vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and claims outside of the Class Period. The Released PAGA Claims shall be released as follows. Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendant, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the class settlement, and will be bound by this PAGA Release (the “PAGA Release”). “Released PAGA Claims” means all claims for penalties under PAGA, arising during the PAGA Period, which were alleged in the operative complaint at the time of final approval by Plaintiff in the Action and Plaintiff’s June 18, 2020 notice letter to the LWDA including, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3 and any resulting claim for attorneys’ fees and costs under PAGA, which occurred during the PAGA Periods.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court’s orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant’s records reflect that you have <<____>> Workweeks worked during the Class Period (January 30, 2017 to September 30, 2021).

Based on this information, your estimated Individual Settlement Payment is <<____>>.

Defendant’s records reflect that you have <<____>> pay periods worked during the PAGA Period (June 18, 2019 to September 30, 2021).

Based on this information, your estimated PAGA Payment Share is <<____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit **entitled *Sarmiento v. Caduceus Healthcare, Inc., San Diego County Superior Court, Case No. 37-2021-00002597-CU-OE-CTL***. I understand that by requesting to be excluded from the settlement, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Sarmiento v. Caduceus Healthcare, Inc., San Diego County Superior Court, Case No. 37-2021-00002597-CU-OE-CTL***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is ILYM Group Inc., 14771 Plaza Drive, Ste. L, Tustin, CA 92780.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
 JCL Law Firm, APC
 5440 Morehouse Drive , Suite 3600
 San Diego, CA 92121
 Tel.: (619) 599-8292
 Fax: (619) 599-2891
 E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
 Zakay Law Group, APLC
 5440 Morehouse Drive, Suite 3600
 San Diego, CA 92121
 Tel: (619) 599-8292
 Fax: (619) 599-8291
 Email: shani@zakaylaw.com
 Website: www.zakaylaw.com

Counsel for Defendant:

Mandy D. Hexom
 Freeman Mathis & Gary, LLP
 225 Broadway, Suite 1460
 Tel.: (619) 687-3000
 E-Mail: mxhesom@fmglaw.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on _____**, at the San Diego County Superior Court, Dept. C-68, located at 330 W Broadway, San Diego, CA 92101-7068 before Judge Richard S. Whitney. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at **1-888-250-6810** or write to ***Sarmiento v. Caduceus Healthcare, Inc., San Diego County Superior Court, Case No. 37-2021-00002597-CU-OE-CTL***, Settlement Administrator, c/o _____.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks to The Children's Advocacy Institute. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2