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Attorneys for Plaintiff DAMON COFFEY, Individually, and on behalf of other members of the general public similarly situated

Additional Counsel Listed on Following Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DAMON COFFEY and BRANDIE
LUKOFNAK, individually, and on behalf of
other members of the public similarly
situated,

Plaintiff

v.

SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, INC.,
a California Corporation and DOES 1-10,
inclusive,

Defendants

CASE NO. 37-2020-00029409-CU-OE-CTL

CLASS ACTION & REPRESENTATIVE
ACTION

**DECLARATION OF RYAN T. KUHN IN
SUPPORT OF PLAINTIFF'S UNOPPOSED
MOTION FOR CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS AND PRELIMINARY APPROVAL
OF GOOD FAITH DETERMINATION OF
CLASS ACTION SETTLEMENT**

Date: January 26, 2024

Time: 8:30 a.m.

Judge: Hon. Keri G. Katz

Dept.: C-74

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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11 Attorneys for Plaintiff BRANDIE LUKOFNAK, Individually, and on behalf of other members of
12 the general public similarly situated
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1 I, Ryan T. Kuhn, hereby declare as follows:

2 1. I am an attorney licensed to practice law before this Court and am employed with the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for DAMON COFFEY,
4 individually, and on behalf of other members of the public similarly situated in the
5 above-captioned matter. I make this declaration in support of Plaintiff's Unopposed Motion
6 for Conditional Certification of Settlement Class and Preliminary Approval of Good Faith
7 Determination of Class Action Settlement.

8 2. I am personally familiar with the facts set forth in this declaration, and if called to testify as a
9 witness I could and would do so.

10 **Background and Investigation**

11 3. On August 21, 2021, Plaintiff Coffey filed the Complaint in this matter. The original
12 Complaint alleged representative California Private Attorney General Act ("PAGA") claims,
13 under the California Labor code involving, *inter alia*, (1) Meal and Rest Period violations; (2)
14 Minimum wage violations; (3) Overtime violations; (4) Wage statement violations; (5) Failure
15 to reimburse business expenses; and (6) Failure to pay wages upon separation.

16 4. On August 27, 2021, Plaintiff filed a First Amended Complaint, to clarify certain issues related
17 to Defendant's entity status.

18 5. On April 22, 2021, Plaintiff filed a Second Amended Complaint, which added class action
19 claims based on same underlying Labor Code violations in the original Complaint.

20 6. As part of settlement, the parties have agreed to allow Plaintiff filed a Third Amended
21 Complaint, which has "merged" the related *Lukofnak* matter into this matter. The Third
22 Amended Complaint is the operative pleading for purposes of this proposed settlement. The
23 Third Amended Complaint will be filed by separate stipulation.

24 7. On January 11, 2020, Plaintiff propounded discovery requests on Defendants, including
25 requests for admission, special interrogatories, requests for production of documents, and
26 general and employment form interrogatories. Through these requests, Plaintiff sought, among
27 other information and documents, the identities of putative class members, Defendants'
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1 compensation policies, meal and rest period policies, employee handbooks, wage statements,
2 payroll records, time records, job descriptions, and reimbursement policies.

3 8. Defendants provided discovery responses, documents, and objections to Plaintiff's requests.
4 After a lengthy meet and confer process, Defendant produced, *inter alia*, Plaintiff's time and
5 wage records, copies of the relevant CBA, copies of all other relevant employee policies, and
6 the contents of Plaintiff's employee file. After the dissemination of *Belair-West* Notice,
7 Defendant produced a large sampling of non-exempt employee Time Records and Wage
8 Statements.

9 9. Defendant also propounded several sets of written discovery on Plaintiff. In total it appears
10 there were at least 12 sets of written discovery exchanged between the parties. Additionally,
11 Plaintiff Coffey appeared for two full days of deposition. SCPMG also produced its "Persons
12 Most Knowledgeable" for a full day of deposition.

13 10. On October 28, 2021, Plaintiff Brandie Lukofnak filed her Class Action Complaint against
14 SCPMG in San Diego Superior Court. On December 27, 2021, Plaintiff Lukofnak filed a
15 PAGA representative action against SCPMG in Los Angeles Superior Court. Both of Plaintiff
16 Lukofnak's Complaints substantially overlap with Plaintiff Coffey's Complaint.

17 11. On January 27, 2023, the Parties attended a full day mediation before the experienced "Wage
18 and Hour" mediator, David Rotman. Prior to the mediation, counsel for both parties agreed to
19 the informal exchange of information pertinent to a class-wide settlement. Both parties
20 prepared and exchanged detailed mediation briefs. At the conclusion of mediation, the parties
21 were unable to reach an agreement to settle this matter.

22 12. Subsequent to the January 27, 2023 Mediation, the Parties continued to litigate the case. To
23 wit, the Parties fully briefed the Motion for Class Certification. However, the Parties also
24 continued settlement discussions between counsel, and through the Mediator. Through these
25 discussions, the Parties agreed on key terms of a settlement that would globally resolve all
26 class and representative "Wage and Hour" claims asserted in the operative Complaint in this
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1 Action. On January 12, 2023, the parties agreed on all key terms of the settlement via a
2 “Memorandum of Understanding.” The parties will be submitting a brief supplement to the
3 motion that contains the fully executed Joint Stipulation of Class and PAGA Action Settlement
4 (the "Agreement") once the parties obtain all signatures. The parties seek the Court’s
5 preliminary approval of the Agreement. Attached hereto as **Exhibit A** is a true and correct copy
6 of the Memorandum of Understanding. Attached hereto as **Exhibit B** is a true and correct copy
7 of the Joint Stipulation of Class and PAGA Action Settlement (the "Agreement").

8 **Terms of the Agreement**

- 9 13. The parties agreed to use Rust Consulting, as the “Settlement Administrator” for purposes of
10 providing the Notice to Settlement Class Members, issuing payments pursuant to the
11 Agreement, and to administer the claims. Rust Consulting’s sole business has been the
12 administration of class action settlements and class action notices, an area in which it has
13 extensive experience.
- 14 14. Class Members will be entitled to an average share of approximately **\$121.05**. I calculated this
15 number by taking the total settlement amount, subtracting all contingent costs as proposed on
16 page one of the memorandum, and dividing by the estimate of 48, 432 Class Members. This
17 is an estimate only as the actual share will depend on the amount of pay periods they were
18 employed during the limitations period.
- 19 15. A true and correct copy of the proposed Class Notice is attached as **Exhibit C**.
- 20 16. Defendant also agrees to pay Plaintiffs Coffey and Lukofnak Ten Thousand Dollars
21 (**\$10,000.00**) each, as an enhancement award in consideration for their services as Class
22 Representatives. The enhancement awards were decided pursuant to good faith negotiations
23 and is intended to recognize that it was the class representatives who initiated the lawsuit,
24 initiated the PAGA claims, provided critical documents and witnesses to their attorneys, and
25 worked with their attorneys to propound and prepare written discovery, all in an effort to obtain
26 moneys allegedly owed not only to themselves, but to thousands of other employees.
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1 **Claims Analysis and Potential Recovery**

- 2 17. Our office submits this settlement provides class members with a guaranteed recovery of a
3 large portion of their “potential” damages as set forth below. As set forth above, the “average”
4 recovery (before taxes) will be approximately **\$121.05** per class member.
- 5 18. Based on the damage calculations and relevant case law below, my office submits the likely
6 “best case” recovery for an average class member would have been approximately **\$1,235.44**.
7 A “worst case” scenario (in the event of a denial of class certification or a defense verdict)
8 would have been a **zero dollar** recovery.
- 9 19. As part of our analysis I also have to consider the fact that Defendants were willing to stipulate
10 to class certification on all claims as a result of the settlement, ensuring a monetary recovery
11 to all participating class members. Accordingly, I believe that warrants a further reduction from
12 any potential maximum recovery.

13 **Damage Calculations**

- 14 20. The following estimated damage calculations were completed after review of the sampling of
15 class member time and wage records, and after interviews with Plaintiff, and other class
16 members. The breakdown of the damage and penalties calculation is as follows:

17 **Unpaid Compensation Violations: \$45.62** (average hourly rate) x **43,840** (number of
18 employees) x **3.5** (years at issue in limitations period) x **8** (approximate unpaid hours per year)
19 = **\$55,999,462.40**. Taking into account SCPMG’s defenses (both to Class Certification, and
20 its “substantive” defenses) this claim is valued at approximately \$11,176,900.00.

21 **Meal Period Policy Violations: \$45.62**(average hourly rate) x **43,840** (number of employee
22 positions) x **3.5** (years at issue in limitations period) x **10** (approximate meal period violations
23 per employee in a year) = **\$69,999,328.00**. Taking into account SCPMG’s defenses (both to
24 Class Certification, and its “substantive” defenses) this claim is valued at approximately
25 \$13,971,125.00.

26 **Rest Period Policy Violations: \$45.62** (average hourly rate) x **43,840** (number of employee
27 positions) x **3.5** (years at issue in limitations period) x **10** (approximate rest period violations
28 per employee in a year) = **\$13,971,125.00**.

positions) x 3.5 (years at issue in limitations period) x 10 (approximate rest period violations per employee in a year) = \$69,999,328.00. Taking into account SCPMG's defenses (both to Class Certification, and its "substantive" defenses) this claim is valued at approximately \$13,971,125.00.

Labor Code § 226 Penalties: 43,840 (number of employees) x \$50 (per violation) x 36 (pay periods in one year limitations period) x .40 (approximate rate of violations per pay period) = \$31,564,800.00. Taking into account SCPMG's defenses (both to Class Certification, and its "substantive" defenses) this claim is valued at approximately \$6,300,000.00.

Labor Code §2802 Penalties: 43,840 (total number of employees) x \$10 (estimated average amount of reimbursement due per employee) = \$438,400.00

Labor Code § 203 Penalties: \$45.62 (average hourly rate) x 6.0 (hours, per day) x 30 (days, per Labor Code section 203) x 6,062(number of former employees) = \$8,296,453.20

"PAGA" Violations: 6 (separate Labor Code violations based on the above claims) x 43,840 (number of employees) x \$50 (per violation) x 36 (pay periods in one year limitations period) = \$473,472,000.00. The aggrieved employees are only entitled to s 25% share of this amount, which is \$118,368,000.00.

The "FLSA Sub-Class" Claims: The release for the Sub-Class Members is limited, as this subclass includes individuals who were class members in a prior class action settlement, *Leyva v SCPMG*. The limited sub-class release is related to paid sick leave, under the Healthy Workplaces Healthy Families Act, and claims for reimbursement for business expenses. All other claims alleged by the Class were already released via the *Leyva* Settlement. Given the limited nature of these claims, the parties negotiated a separate "per-person" payment in the amount of \$15 a person will be made to the sub-class members. Based on the "Sub-Class Size," this results in a total estimated amount of \$657,600.00.

21. Based on the above, a best case recovery (which would be admittedly highly unlikely, given the factors set forth below) would be a total judgment of \$172,529,861.00.

Relevant Case Law Supports a Further Reduction on any Recovery

22. It is my opinion that it would be *highly* unlikely to ever be awarded any amount approaching the maximum damages set forth above. To wit, the majority of the damages above are “derivative” penalties under PAGA, Labor Code § 203 and Labor Code § 226.
23. Please see the analysis of the relevant caselaw cited in the memorandum (pp. 12-13) which allows significant mitigation of PAGA penalties, which prohibits stacking of multiple penalties for the same underlying conduct and declines to automatically award §§ 203 and 226 penalties for meal and rest break violations without a further evidentiary showing.
24. Our office believes a mitigation of the damages and potential PAGA penalties would be warranted here. Defendants immediately stepped up to discuss early resolution. Defendants also committed to make changes to the challenged timekeeping and meal and rest period policies after receiving notice of this lawsuit. Also, as in the *Carrington* case (which was handled by this office), there is evidence that Defendant attempted to provide meal and rest periods *in practice*, even where the breaks were missed. Given this, it is likely that any violations by Defendant were not “willful.” Finally, given the defenses raised by Defendant to maintaining this matter as a class or representative action, there was a significant risk that many of the claims would not have even been able to survive to a trial.
25. As to the ex-employee claim pursuant to Labor Code § 203, the parties agree the failure to pay “ex-employees” claim is derivative of the other claims. As Defendants are able to assert a “good faith dispute” for withholding any unpaid wages, it would be difficult to establish any liability for a “willful” failure to pay wages owed.
26. Based on the above, it would be likely that PAGA penalties would be reduced to approximately \$5 per violation and the Court would find no basis for imposing Labor Code §§ 203 or 226 penalties, or separate FLSA damages.
27. If this happened, the realistic anticipated “best case” judgment following trial would be approximately \$37,853,648.00. Discounting 40% for contingent costs (fees and costs award,

enhancement bonus, administration, etc.), the average class member's share of this recovery would be **\$345.38** (\$15,141,459.20 divided by 43,840 class members).

28. Given our office's analysis, I submit this number is the most likely "best case" recovery per class member. Given all the risks on each claim the estimated **\$121.05** average recovery secured via this settlement, is a reasonable compromise and is in the best interests of the class given all the risks of continued litigation.

Analysis of Risk on Each Potential Claim

29. Each of the primary claims also had risks to obtaining both class certification and liability. If Defendant's asserted defenses were successful, the class would not receive anything.

30. Plaintiffs' unpaid wages (and unpaid overtime) claims were based on the allegation that employees were performing unpaid work due to the SCPMG standard timekeeping system, which "rounded" employee time entries and caused other losses due to (1) the "grace period" policy, and (2) certain alleged "transitional math errors" caused by the payroll system. Plaintiffs alleged this resulted in regular time and overtime pay being owed where Defendants were on notice of work being performed without pay. Defendants argued that rounding of total hours worked has been recognized under California law. Defendants also denied that any unpaid work occurred, and even if some did occur, SCPMG claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition against off-the-clock work and a mandate that all time worked must be recorded accurately. SCPMG asserted proof of these alleged violations would require individualized inquiries, which could preclude class certification and make any PAGA claims unmanageable.

31. As to meal and rest period claims, Plaintiffs were able to identify thousands of examples of missing or late meal periods without the provision of a meal period penalty payment. However, SCPMG argued that these records do not conclusively show whether (1) SCPMG actually failed to provide the meal period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. Additionally, in light of SCPMG's written meal period policy and the wide variations

1 in alleged violations and departments at the hospital, Defendants contended there was no
2 uniform policy or practice, requiring individualized inquiries that would preclude class
3 certification and make any PAGA claims unmanageable.

4 32. Plaintiffs also alleged the SCPMG written policies improperly restricted class members from
5 leaving the premises during their rest breaks. Defendants pointed out that the policy contained
6 no such restriction and argued that witness testimony would demonstrate that in practice, no
7 such "leave the premises" restriction was ever enforced. Defendants also contended
8 individualized inquiries will abound as to why individual employees may have failed to take
9 appropriate meal periods or rest breaks.

10 33. As to the wage statement claims, Plaintiffs acknowledge that these claims are largely
11 derivative, in that both the gross and net wages could be found to be inaccurate, due to the
12 above-referenced claims. SCPMG argued that the failure to list gross and net wages are
13 derivative of other claims that may ultimately fail and as a result there is no "knowing and
14 intentional failure" to list information, which triggers liability under Labor Code §226(e).
15 Defendants (as with the underlying meal and rest period claims) maintained individualized
16 inquiries would abound as to why breaks were missed and whether meal period premiums
17 should have been paid in the first place, requiring individualized inquiries that would preclude
18 class certification and make any PAGA claims unmanageable.

19 34. Plaintiffs contend that SCPMG violated Labor Code section 2802 by failing to reimburse its
20 employees for certain costs, including cellular phone costs, work supplies and mileage.
21 SCPMG countered that it has a comprehensive written policy for expense reimbursements in
22 its employee handbook. The majority of SCPMG employees were not able to do remote work
23 due the nature of the work involving direct patient care. SCPMG further contended that
24 Plaintiffs'(and others') positions did not require the use of a cell phone.

25 35. Based on all of the above, my experience, and all the information within the moving papers,
26 I submit that this proposed Settlement is fair, adequate and reasonable. I also submit it is well
27 within the accepted range of recoveries for similar wage and hour class actions.
28

Certification of the Proposed Settlement Class is Appropriate

36. Here, Defendant's records show that approximately **48,432 class members** worked for the company during the limitations period. The proposed class in this case is sufficiently cohesive because, for purposes of the Settlement only, the parties have stipulated that all class certification elements are met.

37. Here, for purposes of the Settlement, the parties agree the claims of Class Members all involve the same questions of law and fact. Namely, all class members were subject to the same employment policies and practices of Defendant.

38. The proposed class representatives have no adverse interests to the class. Plaintiffs are paid based on the same formula as other class members and have claims substantially the same as all the other Class Members.

39. Additionally, any Class Member who wishes to "opt out" of the Settlement may do so and retain all of their individual rights. Therefore there is no conflict of interest between the Class Representatives and the Class Members. Thus, at least for settlement purposes, we submit the adequacy prong is met.

40. Given that there are 48,432 individuals, it would be preferable to resolve all of the Class Members' claims by means of a class-wide settlement than to require each Class Member to litigate his or her individual claims.

41. When negotiating the settlement, both sides took into account the strengths and weaknesses of their opponent's positions as pointed out by David Rotman, the data available to evaluate liability and damages, the lack of data or evidence on certain issues, and the substantial and evolving law applicable to the merits of the claims. The Agreement was only agreed to after extensive arms-length negotiations resulting in a unique compromise that permits all parties to move forward and bring this action to close. In spite of a mutual desire to resolve this action, the negotiations remained at all times adversarial.

42. I believe this settlement is in the best interest of the class as it provides **(1)** a guaranteed favorable result; **(2)** guaranteed monetary recovery over a reasonably short period of time, as

1 opposed to possibly waiting additional years for a potentially worse result; and **(3)** significant
2 savings in attorneys' fees and costs, which would have increased had the case progressed
3 through trial and possible appeals.

4 43. Without entering into the Agreement, there existed a significant chance that Defendant would
5 prevail on the merits of some or all claims and that Class Members would receive nothing.
6 Through the Agreement, participating Class Members receive guaranteed cash, and this action
7 has also been the catalyst for programmatic relief.

8 44. If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
9 and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being
10 litigated, the parties may be required to hire multiple experts each (as many as 8 total). This
11 would result in not only the production of eight expert reports, but eight depositions as well.
12 And, based on previous discussions between counsel regarding the remaining claims (including
13 the PAGA claims), the parties anticipated at least one motion to compel, a motion for class
14 certification and two dueling motions for summary judgment / adjudication (one from each
15 side).

16 45. Importantly, even after engaging in all of the potential continued and protracted litigation set
17 forth above, the putative class would continue to have no guarantee of success on any of the
18 claims advanced in this case. Thus, the parties and our office believes in good faith that the
19 proposed resolution is a fair, reasonable, and adequate compromise.

20 46. Our office had filed a Motion for Class Certification at the time of settlement. However,
21 Defendant presented multiple different defenses to certification not only during mediation, but
22 also through its opposition to the Motion for Class Certification. Even assuming Plaintiff did
23 obtain class certification of the claims, each claim is subject to substantial risk of a Defense
24 verdict at trial.

25 47. Our office has interviewed at least 12 Class Members in the course of investigating and
26 litigating this matter. We have also reviewed thousands of pages of documents produced by
27 Defendants, Plaintiffs, and Class Members.
28

1 48. Our office has considerable experience in wage and hour and class action litigation. Trial
2 Attorney, William Sullivan has over 30 years of experience, 29 years of which has been
3 devoted to both prosecuting and defending class action litigation. Mr. Yaeckel has over 13
4 years of experience all of which have been dedicated primarily to class action and
5 representative action (PAGA) litigation. I have over 5 years of experience in class action
6 litigation. I am aware counsel for Defendant also has extensive experience handling class
7 action and representative action litigation.

8 49. Based on this experience, and all other relevant factors addressed above, our firm believes the
9 Agreement to represent a fair, adequate and reasonable settlement that is well within the
10 accepted range of recoveries for similar wage and hour class actions. We further believe the
11 Agreement is in the best interests of the Settlement Class Members.

12 50. Based on this experience, we also believe the \$300,000 allocation towards the PAGA claims
13 is a fair, reasonable, and adequate allocation, especially given the risks of mitigation identified
14 above.

15 51. Prior to preliminary approval, what can be said of the reaction the class members is limited.
16 However, our office has spoken to some Class Members since the parties reached a proposed
17 settlement agreement, and all were in favor of the settlement.

18 **Contingent Costs**

19 52. Defendant will agree to pay \$3,323,333.33 in attorneys' fees, which is thirty-three and one-
20 third (33 1/3%) of the total settlement, and up to Sixty Five Thousand and Dollars (\$65,000.00)
21 in litigation costs.

22 53. For costs incurred in administrating the settlement, Defendant will pay the actual costs,
23 currently estimated at One Hundred and Twenty Three Thousand Dollars (\$123,000.00).
24 Attached hereto as **Exhibit D** is a true and correct copy of the bid from Rust Consulting.

25 54. Defendant also agrees to allocate Three Hundred Thousand Dollars (\$300,000.00) to Plaintiffs'
26 PAGA claims with 75% of the amount, or \$225,000.00, being paid to the LWDA, and 25%,
27 or \$75,000.00, being distributed amongst the class members.
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1 55. After deduction from the total “Settlement Amount” of the projected costs of administration,
2 proposed class representative service awards, potential attorney fees and costs, the “Net
3 Settlement Amount (“NSA”) will be distributed to all Class Members who do not file a
4 request for exclusion. Participating Class Members will receive their share of the NSA based
5 on the total amount of time they worked during the Class and PAGA Period.

6 56. Additionally, the “Sub-Class” Members (an extremely limited claim) will receive a separate
7 “per person” payment of \$15.00.
8

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct. Executed this 19th day of January, 2024 at San Diego, California.
11

12 *Ryan Kuhn*
13 _____
Ryan T. Kuhn

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

1. This Memorandum of Understanding ("MOU") is entered into in *Lukofnak v. Southern California Permanente Medical Group* (San Diego County Superior Court Case No. 37-2021-00046006-CU-OE-CTL and Los Angeles County Superior Court Case No. 21AHCV00161) and *Coffey v. Southern California Permanente Medical Group* (San Diego County Superior Court Case No. 37-2020-029409-CU-OE-CTL), by and between Plaintiffs Damon Coffey and Brandie Lukofnak on behalf of themselves, the putative class, and the State of California ("Plaintiffs") and Defendant Southern California Permanente Medical Group ("Defendant") (collectively, the "Parties"), for the purpose of memorializing their agreement to the principal terms of a settlement of this action.
2. This MOU shall become binding and enforceable upon its execution by Plaintiffs and a designated representative of Defendant. The Parties agree that even if no formal settlement document is signed, they intend this MOU to be enforceable by motion under California Code of Civil Procedure Section 664.6. Further, the Parties intend this MOU to be enforceable, notwithstanding the confidentiality provisions of California Evidence Code Sections 1119, *et seq.*
3. The Parties also intend this MOU to be fully binding and enforceable by the Court upon motion of any party, and pledge their good faith and fair dealing in providing assent to a final settlement agreement.
4. The settlement class herein consists of the following: All non-exempt persons who were employed by Defendant in the State of California at any time during the Class Period (defined as July 8, 2020 through the earlier of preliminary approval or February 13, 2024) ("Class Members"). It shall be an opt-out class.
5. There will be a settlement sub-class that consists of the following: All non-exempt persons who were employed by Defendant in the State of California at any time during the Sub-Class Period (defined as August 21, 2016 through July 7, 2020) (The "Sub-Class Members."). The Sub-Class Members will only be releasing claims based on the facts that are or could have been alleged in the Operative Complaint that occurred during the Subclass Period reasonably related to paid sick leave under the Healthy Workplaces, Healthy Families Act, and claims for reimbursement for business expenses. The release for the Sub-Class Members is limited as this subclass includes people who were class members in a prior class action settlement, *Leyva v SCPMG*, attached.
6. The "PAGA Group Members" consist of all non-exempt persons who were employed by Defendant in the State of California at any time from July 8, 2020 through the earlier of the date of preliminary approval or February 13, 2024 ("PAGA Period").
7. The "PAGA Sub-Class Members" consist of all non-exempt persons who were employed by Defendant in the State of California at any time from June 23, 2019 through July 7, 2020 (the "PAGA Sub-Class Period"). The PAGA Sub-Class

Members are also only releasing claims based on the facts that are or could have been alleged in the Operative Complaint that occurred during the PAGA Sub-Class Period reasonably related to paid sick leave under the Healthy Workplaces, Healthy Families Act and claims for reimbursement for business expenses.

8. Defendant estimates that the Class Members worked 3,881,427 workweeks between July 8, 2020 and January 27, 2023. If the workweeks from July 8, 2020 through January 27, 2023 are more than 10% greater than 3,881,427, Defendant will pay an increased pro rata amount for each 1% over 10%, so that if the additional workweeks are 11% greater, Defendant will pay an additional 1%, if the additional workweeks are 12% greater, Defendant will pay an additional 2%. Defendant also estimate that from August 21, 2016 to July 7, 2020, Defendant employed 43,840 Subclass Members. If the number of Subclass Members who worked during the Subclass Period are more than 10% greater than 43,840, Defendant will pay an increased pro rata amount for each 1% over 10%, so that if the number of Subclass Members are 11% greater, Defendant will pay an additional 1% if the additional Subclass Members are 12% greater, Defendant will pay an additional 2%.
9. The "FLSA Subclass Members" consist of all non-exempt persons who were employed by Defendant in the State of California at any time from August 21, 2017 through the date of preliminary approval ("FLSA Subclass Period").
10. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. Final means when all of the following events have occurred: (1) The Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant's Counsel; (2) The Court has given preliminary approval to the Settlement; (3) The Court has held a Final Settlement Approval Hearing and has entered a Final Order and Judgment, approving the Settlement. It is the Parties' intention that the Settlement shall be final for purposes of the Effective Date at the time of Final Approval, if no objections to the settlement are filed. Only in the event that written objections are filed prior to the Final Settlement Approval Hearing, which are not later withdrawn prior to final approval, the Effective Date shall be the later of: (a) the date of final affirmance on an appeal of the Judgment; the expiration of the time for a petition to review the Judgment; and, if review is granted, the date of final affirmance of the Judgment following review; or (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date for filing any appeal from the Judgment either (i) the date sixty (60) calendar days after the entry of Final Judgment and Order Approving Settlement, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (ii) in the event a motion for reconsideration, an appeal or other effort to obtain review of the Final Judgment and Order Approving Settlement, the date sixty (60) calendar days after such reconsideration, appeal or review has been finally concluded and is no longer subject

11. to review, whether by appeal, petition for rehearing, petition for review or otherwise. Subject to Court approval, the Parties agree to the designation of Sullivan & Yaeckel Law Group, APC and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel.
12. Plaintiff Coffey agrees to amend his Complaint to add Lukofnak as a plaintiff. In amending his Complaint, Plaintiff Coffey will also modify the class definition and PAGA group definition to encompass the definition of Class Members and PAGA Group Members above and will add the claims and theories alleged in the Lukofnak complaints, claims under the Fair Labor Standards Act, and other claims and theories encompassed by the settlement and release below to ensure that all included Class Members, claims and theories are clearly articulated and covered. Defendant will stipulate to the filing of an amended Complaint (the "Operative Complaint"). Defendant will agree not to remove the matter to federal court. Plaintiff Coffey further agrees to amend his PAGA Notice to the LWDA to add the claims and theories alleged in the Lukofnak PAGA complaint and other claims and theories encompassed by the settlement and release below to ensure that all included PAGA claims and theories are clearly articulated and covered.
13. Within 14 days after Plaintiff Coffey amends his Complaint as noted above, Plaintiff Lukofnak will request to have her claims dismissed without prejudice.
14. The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant Preliminary and Final Approval of Class Action Settlement, the Parties shall return to status quo ante.
15. The settlement will be on a common fund basis, there will be no claim form or claims process, and there will be no reversion to Defendant.
16. Except as set forth in Paragraphs 17 and 20 below, Defendant shall pay an amount no more than a Gross Fund Value ("GFV") of \$9,970,000 in settlement of this matter. The Net Settlement Amount is the amount after the following deductions are made from the GFV: (a) all costs of settlement administration performed by a third party settlement administrator; (b) enhancement payment to Plaintiffs; (c) payment to the Labor and Workforce Development Agency ("LWDA") ("PAGA Fund"); and (d) costs and attorneys' fees for counsel for Plaintiffs.
17. Plaintiffs will request that the Court approve an award of attorney's fees in an amount of one-third of the GFV, actual costs and an Incentive Award to class representative Damon Coffey in an amount not to exceed \$10,000 and to class representative Brandie Lukofnak in an amount not to exceed \$10,000. Plaintiff Coffey agrees to a full general release through the date of final approval of all claims against Defendant and any related entities or persons, including a California Civil Code Section 1542 release, in exchange for the Incentive Award, except this will not affect the individual settlement amount Plaintiff Coffey will receive as part of this settlement nor will the general release be applicable to or related to Workers' Compensation claims. In

addition to the GFV, Defendant agrees to pay Plaintiff Lukofnak \$30,000 in exchange for a California Civil Code Section 1542 release, and settlement of Plaintiff Lukofnak's individual claims that will be memorialized in a separate, long form individual settlement agreement, except this will not affect the individual settlement amount Plaintiff Lukofnak will receive as part of this settlement nor will the general release be applicable to or related to Workers' Compensation claims. Defendant will not oppose Plaintiffs' requests for attorneys' fees and an Incentive Award as outlined above. The amount of any reduction by the Court of these requests will be added to the Net Settlement Amount.

18. Payment will be made to Class Members, PAGA Group Members, and FLSA Subclass Members based on a formula to be determined by the Parties. As to the "Sub-Class Members" they will be paid on a separate per-person payment in the amount of \$15 a person for a total estimated amount of \$657,600.
19. The Parties agree to solicit bids from two third-party administrators to administer this settlement. The third party administrator will issue to Class Members a form W-2 and 1099 for all amounts paid under this settlement, making all deductions and withholdings required under law.
20. Parties agree that \$300,000 will be set aside for any PAGA penalties ("PAGA Fund") with \$225,000 paid to the LWDA and the remaining \$75,000 payable to the PAGA Group Members based on the number of workweeks worked during the Class Period. The PAGA Fund shall be paid out of the GFV.
21. Defendant will pay the employer's share of payroll taxes as required by law, and such payments will not reduce the GFV.
22. Defendant shall deposit all funds necessary to pay all amounts due under this agreement with the third party administrator within 14 calendar days of the Effective Date. The third party administrator shall issue the checks constituting the Individual Settlement Payments to the Class Members, payment of the PAGA Fund to the PAGA Group Members, the LWDA Payment, the Incentive Award to Plaintiffs, and Court approved attorneys' fees and costs within 14 calendar days after funding.
23. The Incentive Awards approved by the Court will result in the issuance of a Form 1099 to Plaintiffs, who shall assume full responsibility and liability for the payment of taxes due on such award.
24. Notwithstanding any other provision of this MOU, Defendant shall retain the right, in the exercise of its sole discretion, to nullify the settlement if more than 2% of the Class Members opt out of the class.
25. Class, FLSA and PAGA Release

- a. **Class Release:** Class Members who do not opt out will receive a share of the Net Settlement Amount, less applicable withholdings, based on a formula to be agreed upon by the Parties that takes into account the potential relative value of Class Member claims during the Class Period. Class Members who do not opt out will be paid their portion of the settlement, which will be considered 1/3 wages, 1/3 interest and 1/3 penalties. Class Members who do not opt out shall release Defendant and their present and former affiliates and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under or in concert with any of them ("Releasees"), from any and all Class Claims that occurred during the Class Period based on the facts that are or could have been alleged in the Operative Complaint, including debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), claims regarding rounding, grace periods, shift tolerance, failure to pay for all hours worked (including off-the clock work), failure to provide meal and rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, combining of meal and rest periods, that Defendant's exemption permit from the DLSE is not valid or does not apply to Class Members, failure to timely pay wages and final wages, failure to properly calculate the regular rate of pay, failure to pay or properly calculate meal period premiums, failure to pay or properly calculate paid sick leave, including paid sick leave under the Healthy Workplaces, Healthy Families Act, donning and doffing, pre or post-shift testing or inspections, health status related activities including testing, reporting, and queuing for testing, reporting time pay, failure to furnish accurate wage statements including claims derivative and/or related to these claims, liquidated damages, conversion of wages, that the Labor Code Section 514 exemption does not apply to Defendant's employees, pre and post-shift work and record-keeping violations, up to and including the date of preliminary approval by the Court. This Release shall include all claims that occurred during the Class Period based on the facts that are or could have been alleged in the Operative Complaint and theories arising under the California Labor Code, wage orders, and applicable regulations, including Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 245 *et seq.*, 510, 511, 512, 515, 517, 551, 552, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 1199, all claims and theories arising under Labor Code Section 2802 except for claims related solely to working from home under Labor Code Section 2802 as well as claims under Business and Professions Code section 17200 *et seq.* that are known and unknown based on the facts in the Operative Complaint underlying the alleged violations of the above Labor Code provisions, as alleged in the lawsuits. The release of claims shall include a Civil Code Section 1542 release as to the released claims only. The release shall run through the Class Period (the "Release Period"). Defendant shall have the option to extend the Release Period paying an additional proportionate amount based on the number of additional pay periods.

Except as set forth in Section 6.3 of this Agreement, Class Members do not release any other claims, including Plaintiff Lukofnak's non-class, PAGA, and FLSA claims that are subject to a separate release and claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

b. FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and, as to those Class Members, the Released Claims include any and all claims the Class Members may have under the FLSA arising under or related to the alleged claims during the FLSA Subclass Period. Only those FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims. This release excludes the release of claims not permitted by law. The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the [Action], elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.

c. All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts and theories stated in the Operative Complaint and based on the facts and theories stated in all PAGA Notice letters submitted by both Coffey and Lukofnak, that occurred during the PAGA Period, that are based on the facts that are or could have been alleged in the Operative Complaint.

26. The release shall not include claims related solely to working from home under Labor Code Section 2802.
27. All settlement checks mailed out will expire after one hundred eighty (180) days. The sum value of all expired checks will be tallied by the third party administrator. All such uncollected funds associated with Class Members' and PAGA Group Members' checks will be distributed to a *cy pres* recipient agreed upon by the parties.
28. The settlement payments made to Class Members under this settlement, and any other payments made pursuant to this settlement MOU, will not be utilized to calculate any

additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this settlement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

29. Apart from such award of fees and reimbursement of costs for which provision is made herein, Plaintiffs and Defendant waive any and all claims for fees, costs, indemnity or contribution against Plaintiffs, any Class Member, Class Counsel, Defendant or their counsel.
30. The Parties to this MOU agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.
31. Neither this MOU, nor final form of settlement, shall constitute an admission on behalf of Defendant of any form of liability or the accuracy of any allegation made by Plaintiffs or Class Counsel.
32. The Parties agree this MOU is confidential, except for purposes of enforcement. Plaintiffs and Plaintiffs' Counsel shall not publicize the settlement on their websites, in advertising/marketing materials or on social media, other than filing documents with the Court. The Parties and their counsel agree that they will not issue any press releases or initiate any contact with the media about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry about the settlement from the media, counsel may respond only after the motion for approval of the settlement has been filed and only by confirming the accurate terms of the settlement. Nothing in this provision shall prevent Defendant from making any required disclosure.
33. The Parties to this MOU pledge their good faith and fair dealing in supporting the approval of this settlement by the Court, are represented by competent counsel, and have had an opportunity to consult with counsel prior to execution of this MOU.
34. This MOU may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this MOU shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement. The Parties agree the litigation will be stayed for all purposes upon signing, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the settlement, pending the Final Approval Hearing to be conducted by the Court.

IT IS SO AGREED:

Dated: _____

Dated: 1/16/24

Dated: 1/19/24

Dated: Jan 17, 2024

Dated: JAN 18, 2024

Dated: January 19, 2024

Plaintiff/Class Representative Damon Coffey



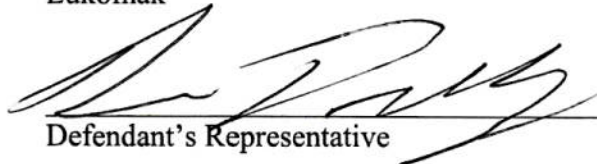
brandie lukofnak (Jan 16, 2024 22:07 EST)

Plaintiff/Class Representative Brandie Lukofnak

Sullivan & Yaeckel Law Group, APC
Counsel for Plaintiff/Class Representative Damon
Coffey



Blumenthal Nordrehaug Bhowmik De Blouw LLP
Counsel for Plaintiff/Class Representative Brandie
Lukofnak



Defendant's Representative



By:

Christian J. Rowley
Kerry Friedrichs
Parnian Vafaenia
Attorneys for Defendant
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP erroneously sued as
SOCAL PERMANENTE MEDICAL GROUP

to form
only)

EXHIBIT B

William B. Sullivan (State Bar No. 171637)
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Attorneys for Plaintiff DAMON COFFEY,
individually, and on behalf of other members of the
public similarly situated

[Additional counsel on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DAMON COFFEY and BRANDIE
LUKOFNAK, individually, and on behalf
of other members of the public similarly
situated,

Plaintiffs,

v.

SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP, and
DOES 1-10, inclusive,

Defendants.

CASE NO. 37-2020-029409-CU-OE-CTL

**STIPULATION AND SETTLEMENT OF
CLASS, COLLECTIVE AND
REPRESENTATIVE ACTION**

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Attorneys for Defendant

SOUTHERN CALIFORNIA PERMANENTE

MEDICAL GROUP

1 Subject to final approval by the Court, which counsel and the Parties agree to diligently
2 pursue and recommend in good faith, Plaintiffs DAMON COFFEY and BRANDIE LUKOFNAK
3 (“Plaintiffs”), individually and on behalf of all other similarly-situated persons and aggrieved
4 employees, on one hand, and Defendant Southern California Permanente Medical Group
5 (“SCPMG”), on the other hand, hereby agree to the following binding settlement of the class,
6 collective and representative actions designated *Coffey v. Southern California Permanente Medical*
7 *Group* (San Diego County Superior Court Case No. 37-2020-029409-CU-OE-CT and *Lukofnak v.*
8 *Southern California Permanente Medical Group* (San Diego County Superior Court Case No. 37-
9 2021-00046006-CU-OE-CTL and Los Angeles County Superior Court Case No. 21AHCV0016
10 (collectively, the “Action”), pursuant to the terms and conditions set forth below (the “Settlement,”
11 “Settlement Agreement,” or “Agreement”). The Agreement refers to Plaintiffs and SCPMG
12 collectively as “Parties,” or individually as “Party.”

13 **1. DEFINITIONS.**

14 1.1 “Action” means the Plaintiffs’ lawsuits alleging wage and hour violations and
15 claims pursuant to the Private Attorneys’ General Act, California Labor Code Section 2698 *et seq.*
16 (“PAGA”), on a class and collective action basis against SCPMG captioned (1) *Coffey v. Southern*
17 *California Permanente Medical Group* (San Diego County Superior Court Case No. 37-2020-
18 029409-CU-OE-CTL, initiated on August 21, 2020 and pending in Superior Court of the State of
19 California, County of San Diego, and (2) *Lukofnak v. Southern California Permanente Medical*
20 *Group* (San Diego County Superior Court Case No. 37-2021-00046006-CU-OE-CTL and Los
21 Angeles County Superior Court Case No. 21AHCV00161.

22 1.2 “Administrator” means Rust Consulting, the neutral entity the Parties have agreed
23 to appoint to administer the Settlement. The Parties mutually selected Rust Consulting after
24 soliciting bids from two class action settlement administrators. The Parties each represent that they
25 do not have any financial interest in the Administrator or otherwise have a relationship with the
26 Administrator that could create a conflict of interest.

27 1.3 “Administration Expenses Payment” means the amount the Administrator will be
28 paid from the Gross Settlement Amount for administering this Settlement, including, but not limited

1 to, printing, distributing, and tracking documents for this Settlement, calculating estimated amounts
2 per Class Member, tax reporting, distributing the Class Settlement Amount, and providing
3 necessary reports and declarations, and other duties and responsibilities set forth herein to process
4 this Settlement Agreement, and as requested by the Parties. The Administration Expenses Payment
5 will be paid from the Class Settlement Amount, including, if necessary, any such costs in excess of
6 the amount represented by the Settlement Administrator as being the maximum costs necessary to
7 administer the Settlement. The Administration Expenses Payment is currently estimated to be
8 approximately \$123,000.00. To the extent actual Administration Expenses Payment are greater
9 than \$123,000.00, such excess amount will be deducted from the Class Settlement Amount, subject
10 to the Court's approval. The Administration Expenses Payment will be paid no sooner than fifteen
11 (15) calendar days following the Effective Date.

12 1.4 "Aggrieved Employees" and "PAGA Group Members" means all non-exempt
13 persons who were employed by Defendant in the State of California at any time from July 8, 2020,
14 through the earlier of preliminary approval or February 13, 2024. A "subclass" of aggrieved
15 employees is defined as all persons who were employed by Defendant in the state of California at
16 any time from June 23, 2019, through July 7, 2020 ("PAGA Subclass Members" and "PAGA Sub-
17 Class Period"). The PAGA Subclass Members are only releasing claims based on the facts that are
18 or could have been alleged in the Operative Complaint that occurred during the PAGA Sub-Class
19 Period reasonably related to paid sick leave under the Healthy Workplaces, Healthy Families Act
20 and claims for reimbursement for business expenses.

21 1.5 "Class Members" means all non-exempt persons who were employed by Defendant
22 in the State of California at any time during the Class Period (defined as July 8, 2020 through the
23 earlier of preliminary approval or February 13, 2024). There will be a settlement sub-class that
24 consists of the following: All non-exempt persons who were employed by Defendant in the State
25 of California at any time during the Sub-Class Period (defined as August 21, 2016, through July 7,
26 2020) (The "Sub-Class Members."). The Sub-Class Members will only be releasing claims based
27 on the facts that are or could have been alleged in the Operative Complaint that occurred during the
28 Subclass Period reasonably related to paid sick leave under the Healthy Workplaces, Healthy

1 Families Act, and claims for reimbursement for business expenses. The release for the Sub-Class
2 Members is limited as this subclass includes people who were class members in a prior class action
3 settlement, *Leyva v SCPMG*.

4 1.6 “Class Counsel” means (1) William Sullivan, Eric Yaeckel, and Ryan Kuhn of
5 Sullivan Law Group, APC, and (2) Norman Blumenthal, Kyle Nordrehaug, and Aparajit Bhowmik
6 of Blumenthal Nordrehaug Bhowmik De Blouw, LLP.

7 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
8 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
9 expenses, respectively, incurred to prosecute the Action. The attorneys’ fees and costs awarded are
10 subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for
11 attorneys’ fees and reimbursement of costs and expenses as set forth above. Such Attorneys’ Fees
12 and Costs shall be paid from the Class Settlement Amount. Defendant shall have no liability for
13 any other attorneys’ fees or costs. To the extent that the Court approves less than the amount of
14 Attorneys’ Fees and Costs that Class Counsel request, the difference between the requested and
15 awarded amounts will be distributed to Class Members on a proportional basis. Class Counsel shall
16 not be entitled to attorneys’ fees or costs for work performed in the Action other than as provided
17 in this Settlement Agreement. The instant Settlement Agreement is the exclusive means for
18 recovery of attorneys’ fees and costs incurred in the Action by any attorney, law firm and/or other
19 legal services provider.

20 1.8 “Class Data” means Class Member identifying information in SCPMG’s possession
21 including the Class Member’s name, last-known mailing address, Social Security number, the
22 number of Class Period Workweeks and, if a Class Member is an Aggrieved Employee, PAGA Pay
23 Periods. SCPMG will provide the Class List directly to the Settlement Administrator.

24 1.10 “Class Member Address Search” means the Administrator’s investigation and
25 search for current Class Member mailing addresses using all reasonably available sources, methods
26 and means including, but not limited to, the National Change of Address database, skip traces, and
27 direct contact by the Administrator with Class Members.

28 1.11 “Class Notice” means the Court Approved Notice of Class Action Settlement and

1 Hearing Date for Final Court Approval, to be mailed to Class Members in English in the form,
2 without material variation, attached as Exhibit A and incorporated by reference into this
3 Agreement.

4 1.12 “Class Period” means the period from July 8, 2020 to the date of preliminary
5 approval of the settlement. The “Sub-Class Period” means the period from August 21, 2016 through
6 July 7, 2020.

7 1.13 “Class Period Workweek” means any workweek during which a Class Member
8 performed any work for SCPMG, during the Class Period.

9 1.14 “Class Representative” means the named Plaintiffs in the operative complaint in the
10 Action seeking Court approval to serve as a Class Representatives.

11 1.15 “Class Representative Service Payment” means the payment to the Class
12 Representatives for initiating the Action and providing services in support of the Action. To the
13 extent that the Court approves less than the amount of Class Representative Service Payments
14 provided herein, the difference between the requested and awarded amounts will be distributed to
15 Class Members on a proportional basis. Plaintiff Coffey agrees to a full general release through the
16 date of final approval of all claims against Defendant and any related entities or persons, including
17 a California Civil Code Section 1542 release, in exchange for the Incentive Award, except this will
18 not affect the individual settlement amount Plaintiff Coffey will receive as part of this settlement
19 nor will the general release be applicable to or related to Workers’ Compensation claims.
20 Defendant will not oppose Plaintiffs’ requests for attorneys’ fees and an Incentive Award as
21 outlined above. The amount of any reduction by the Court of these requests will be added to the
22 Net Settlement Amount.

23 1.16 “Court” means the Superior Court of California, County of San Diego.

24 1.17 “SCPMG” means Defendant Southern California Permanente Medical Group.

25 1.18 “Defense Counsel” means Christian J. Rowley, Kerry M. Friedrichs, Sean T.
26 Strauss, and Parnian Vafaenia of Seyfarth Shaw, LLP.

27 1.19 “Effective Date” means the date by when both of the following have occurred: (a)
28 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the

Judgment is final. Final means when all of the following events have occurred: (1) The Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant's Counsel; (2) The Court has given preliminary approval to the Settlement; (3) The Court has held a Final Settlement Approval Hearing and has entered a Final Order and Judgment, approving the Settlement. It is the Parties' intention that the Settlement shall be final for purposes of the Effective Date at the time of Final Approval, if no objections to the settlement are filed. Only in the event that written objections are filed prior to the Final Settlement Approval Hearing, which are not later withdrawn prior to final approval, the Effective Date shall be the later of: (a) the date of final affirmance on an appeal of the Judgment; the expiration of the time for a petition to review the Judgment; and, if review is granted, the date of final affirmance of the Judgment following review; or (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date for filing any appeal from the Judgment either (i) the date sixty (60) calendar days after the entry of Final Judgment and Order Approving Settlement, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (ii) in the event a motion for reconsideration, an appeal or other effort to obtain review of the Final Judgment and Order Approving Settlement, the date sixty (60) calendar days after such reconsideration, appeal or review has been finally concluded and is no longer subject to review, whether by appeal, petition for rehearing, petition for review or otherwise.

1.20 "Final Approval" means the Court's order granting final approval of the Settlement.

1.21 "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.22 "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.23 "FLSA Subclass Allocation" means the total amount allocated to settlement of claims under the Fair Labor Standards Act ("FLSA"). The FLSA Subclass Allocation is to be paid from the Gross Settlement Amount in the amount of \$100,000.00.

1.24 "FLSA Subclass Members" means all non-exempt persons who were employed by SCPMG in the State of California at any time from August 21, 2017 through the date of preliminary

1 approval.

2 1.25 “FLSA Class Period” means August 21, 2017 through the date of preliminary
3 approval.

4 1.26 “Gross Settlement Amount” means Nine Million Nine Hundred and Seventy
5 Thousand Dollars (\$9,970,000.00), which is the total amount SCPMG agrees to pay under the
6 Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to
7 pay Individual Class Payments, Individual FLSA Payments, Individual PAGA Payments, the
8 LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
9 Payment, Class Representative Service Payments, and the Administration Expenses Payment.

10 1.27 “Individual Class Payment” means the Participating Class Member’s pro rata share
11 of the Net Settlement Amount calculated as set forth in Section 3.2.4, below.

12 1.28 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
13 25% of the PAGA Allocation calculated as set forth in Section 3.2.6.1, below.

14 1.29 “LWDA” means the California Labor and Workforce Development Agency, the
15 agency entitled, under Labor Code section 2699, subdivision (i) to enforce PAGA.

16 1.30 “LWDA PAGA Payment” means 75% of the PAGA Allocation paid to the LWDA
17 under Labor Code section 2699, subdivision (i).

18 1.31 “Net Settlement Amount” means the Gross Settlement Amount, less the following
19 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
20 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
21 Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement
22 Amount is to be paid to Participating Class Members as Individual Class Payments, Individual
23 FLSA Payments, and Individual PAGA Payments.

24 1.32 “Non-Participating Class Member” means any Class Member who opts out of the
25 Settlement by sending the Administrator a valid and timely Request for Exclusion.

26 1.33 “PAGA Period” means the period from July 8, 2020 through the earlier of the date
27 of preliminary approval or February 13, 2024. The “PAGA Sub-Class Period” means the period
28 from June 23, 2019 through July 7, 2020 (the “PAGA Sub-Class Period”).

1.34 “PAGA Pay Period” means any pay period during which an Aggrieved Employee performed any work for SCPMG during the PAGA Period.

1.35 “PAGA Notices” means Plaintiff Damon Coffey’s June 12, 2020 letter and Plaintiff Brandie Lukofnak’s September 30, 2021 letter to SCPMG and the LWDA, and the amended letter Plaintiffs Coffey and Lukofnak submitted to SCPMG and the LWDA each providing notice pursuant to Labor Code section 2699.3, subdivision (a).

1.36 “PAGA Allocation” means the total amount allocated to settlement of claims for PAGA civil penalties. The PAGA Allocation is to be paid from the Gross Settlement Amount in the amount of \$300,000.00, allocated 25% to the Aggrieved Employees (\$75,000.00) and 75% to the LWDA (\$225,000.00).

1.37 “PAGA Subclass Allocation” means the total amount allocated to settlement of the PAGA Subclass Members’ claims for PAGA civil penalties during the PAGA Subclass Period. The PAGA Subclass Allocation is to be paid from the Gross Settlement Amount in the amount of \$75,000.00, allocated 25% to the Aggrieved Employees (\$18,750) and 75% to the LWDA (\$56,250).

1.38 “Participating Class Member” or “Settlement Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.39 “Plaintiffs” means Damon Coffey and Brandie Lukofnak, the named plaintiffs in the Action.

1.40 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.41 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.42 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.43 “Released Parties” means SCPMG and each of its current and former direct and indirect affiliates, other related business entities, parents, shareholders, and equity holders, and each of their respective divisions, subsidiaries, joint ventures, customers, partners, actual or alleged joint

1 employers, officers, directors, employees, contractors, agents, principals, representatives,
2 accountants, auditors, consultants, attorneys, insurers and reinsurers, other representatives or
3 persons or acting by, through, under or in concert with any of the forgoing, and each of the
4 forgoing's successors, predecessors and heirs, and any other persons that could be jointly liable
5 with SCPMG for any of the Released Claims.

6 1.44 "Request for Exclusion" is the notice submitted by a Class Member requesting to be
7 excluded from the Settlement. For the Request for Exclusion to be valid, it must include the Class
8 Member's full name, signature, address, telephone number and a written statement requesting to be
9 excluded from this Settlement. The Request for Exclusion must be returned by mail or fax to the
10 Settlement Administrator at the specified address or facsimile number and postmarked or faxed on
11 or before the Response Deadline. The date of the postmark or fax receipt confirmation will be the
12 exclusive means to determine whether a Request for Exclusion has been timely submitted. A Class
13 Member who does not submit a timely and valid Request for Exclusion from the Settlement will be
14 deemed a Class Member and will be bound by all terms of the Settlement Agreement if the
15 Settlement is granted Final Approval by the Court.

16 Any Class Member who opts out of this Agreement may not submit an Objection and shall
17 not receive any Individual Settlement Payment, and shall not be bound by the releases set forth in
18 this Agreement. Any Class Member who opts out of this Agreement will still receive an Individual
19 PAGA Payment. If a Class Member submits both a Request for Exclusion and an Objection, then
20 the Request for Exclusion will be valid and will invalidate the Objection. Plaintiffs, as class
21 representatives, are not permitted to, and agree that they will not, opt out of this Agreement.

22 1.45 "Response Deadline" means 45 days after the Administrator mails Notice to Class
23 Members and Aggrieved Employees and shall be the last date on which Class Members may: (a)
24 fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or
25 their Objection to the Class Action component of the Settlement. Class Members to whom Notice
26 Packets are resent after having been returned undeliverable to the Administrator shall have a
27 Response Deadline that is an additional 14 calendar days after the Response Deadline has expired.

28 **2. RECITALS.**

2.1 On August 21, 2020, Plaintiff Coffey commenced this Action by filing a Complaint alleging a claim for relief under the PAGA asserting meal and rest period violations, minimum wage and overtime violations, wage statement and final pay violations, and failure to reimburse business expenses. On August 27, 2020, Plaintiff Coffey filed a First Amended Complaint, amending the entity name of Defendant. On April 22, 2021, Plaintiff Coffey filed a Second Amended Complaint, adding the following class action claims in addition to the PAGA claim for penalties: (1) Violation of Labor Code §§ 226.7 and 512 and applicable IWC wage orders (failure to provide meal periods and rest breaks), (2) Violation of Labor Code §§ 510, 1194, and 1197 and applicable IWC wage orders (failure to pay minimum wages and overtime compensation, including failure to properly calculate the regular rate of pay for purposes of paying overtime); (3) Violation of Labor Code § 226 (wage statement violations); (4) Violation of Labor Code § 2802 (failure to reimburse business expenses); (5) Violation of Labor Code §§ 201-203 (waiting time penalties). On October 28, 2021, Plaintiff Lukofnak filed a class action complaint in San Diego County Superior Court, Case No. 37-2021-00046006-CU-OE-CTL, which asserted the following class claims: (1) unfair competition in violation of Cal. Bus & Prof. Code §§ 17200, et seq.; (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 Labor Code §§ 510, 1194 & 1198; (4) failure to provide required meal periods in violation of Cal. Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal. Labor Code §§ 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (7) failure to reimburse employees for required expenses in violation of California Labor Code § 2802; and, (8) failure to provide wages when due in violation of California Labor Code §§ 201, 202 and 203. On December 27, 2021, Plaintiff Lukofnak filed a separate action in the Los Angeles County Superior Court, Case No. 21AHCV00161, which asserted a single representative action claim under PAGA. As set forth in Section 11.20, below, Plaintiff Coffey will file a Third Amended Complaint (the “Operative Complaint”) (1) adding Plaintiff Lukofnak as a plaintiff, and (2) amending the class definition to include certain claims that are now the subject of this settlement. SCPMG denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative

1 Complaint and denies any and all liability for the causes of action alleged.

2 2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs gave timely
3 written notice to SCPMG and the LWDA by sending the PAGA Notices.

4 2.3 On January 27, 2023, the Parties participated in an all-day mediation presided over
5 by David Rotman. While the case did not settle that day, several follow up discussions occurred
6 between the Parties and the Mediator, which led to the instant settlement.

7 2.4 Prior to mediation, Plaintiffs obtained, through formal and informal discovery, time
8 and pay records for putative class members, deposition testimony of SCPMG's person most
9 qualified, and other relevant documents and information. Plaintiffs' investigation was sufficient to
10 satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
11 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
12 130 ("*Dunk/Kullar*").

13 2.5 The Parties stipulate to class certification for settlement purposes only.

14 **3. MONETARY TERMS.**

15 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below,
16 SCPMG promises to pay Nine Million Nine Hundred and Seventy Thousand Dollars
17 (\$9,970,000.00) and no more as the Gross Settlement Amount. SCPMG will also be responsible
18 for any employer payroll taxes required by law, separate and in addition to the Gross Settlement
19 Amount, including the employer FICA, FUTA, and SDI contributions on the wage portion of the
20 Individual Settlement Payments. SCPMG has no obligation to pay the Gross Settlement Amount
21 (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The
22 Administrator will disburse the entire Gross Settlement Amount without asking or requiring
23 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
24 payment. None of the Gross Settlement Amount will revert to SCPMG.

25 3.2 Payments from the Gross Settlement Amount. The Administrator will make and
26 deduct the following payments from the Gross Settlement Amount, in the amounts specified by the
27 Court in the Final Approval Order:

28 3.2.1 To Plaintiffs: Class Representative Service Payments to the Plaintiffs as

1 Class Representatives of not more than Ten Thousand Dollars each (for a total of
2 \$20,000.00) (in addition to any Individual Class Payment and any Individual PAGA
3 Payment the Class Representative is entitled to receive as a Participating Class Member).
4 SCPMG will not oppose Plaintiffs' request for a Class Representative Service Payment that
5 does not exceed this amount. As part of the motion for Final Approval, Plaintiff will seek
6 Court approval for any Class Representative Service Payments no later than 16 court days
7 prior to the Final Approval Hearing. If the Court approves a Class Representative Service
8 Payment less than the amount requested, the Administrator will retain the remainder in the
9 Net Settlement Amount. The Administrator will pay the Class Representative Service
10 Payment using IRS Form 1099. Defendant makes no representations as to the tax treatment
11 or legal effect of the payment called for herein, and Plaintiffs are not relying on any
12 statement or representation by Defendant or by Class Counsel in this regard. Plaintiffs
13 assume full responsibility and liability for employee taxes owed on the Class Representative
14 Service Payment.

15 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33 1/3%
16 of the Gross Settlement Amount, which is currently estimated to be \$3,323,333.33, and a
17 Class Counsel Litigation Expenses Payment of not more than \$65,000.00. SCPMG will not
18 oppose requests for these payments provided that they do not exceed these amounts. If the
19 Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses
20 Payment less than the amounts requested, the Administrator will allocate the remainder to
21 the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any
22 other Plaintiffs' counsel arising from any claim to any portion any Class Counsel Fee
23 Payment and/or Class Counsel Litigation Expenses Payment. The Class Counsel Fees
24 Payment awarded by the Court shall be allocated between Class Counsel as follows: 50%
25 to Sullivan Law Group, APC, and 50% to Blumenthal Nordrehaug Bhowmik De Blouw
26 LLP. The Class Counsel Litigation Expenses Payment awarded by the Court shall be
27 allocated based upon the Class Counsel's respective declarations as to litigation expenses
28 incurred. The Administrator will pay the Class Counsel Fees Payment and Class Counsel

1 Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes
2 full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the
3 Class Counsel Litigation Expenses Payment and holds SCPMG harmless, and indemnifies
4 SCPMG, from any dispute or controversy regarding any division or sharing of any of these
5 Payments.

6 3.2.3 To the Administrator: An Administration Expenses Payment not to exceed
7 \$123,000.00 except for a showing of good cause and as approved by the Court. To the extent
8 the Administration Expenses Payment is less or the Court approves payment less than
9 \$123,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

10 3.2.4 To Each Participating Class Member: An Individual Class Payment calculated
11 by (a) dividing the Net Settlement Amount by the total number of Class Period Workweeks
12 worked by all Participating Class Members during the Class Period and (b) multiplying the
13 result by each Participating Class Member's Class Period Workweeks.

14 3.2.4.1 Tax Allocation of Individual Class Payments. 33% of each
15 Participating Class Member's Individual Class Payment will be allocated to
16 settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to
17 tax withholding and will be reported on an IRS W-2 Form. The remaining 67% of
18 each Participating Class Member's Individual Class Payment will be allocated to
19 settlement of claims for non-wages, expense reimbursement, interest and penalties
20 (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
21 withholdings and will be reported on IRS 1099 Forms. Participating Class Members
22 assume full responsibility and liability for any employee taxes owed on their
23 Individual Class Payment.

24 3.2.4.2 Effect of Non-Participating Class Members on Calculation of
25 Individual Class Payments. Non-Participating Class Members will not receive any
26 Individual Class Payments. The Administrator will retain amounts equal to their
27 Individual Class Payments in the Net Settlement Amount for distribution to
28 Participating Class Members in accordance with Paragraph 3.2.4.

1 3.2.5 To Each Participating Subclass Member: Each Participating Subclass
2 Member will be paid a separate per-person payment in the amount of \$15 a person.

3 3.2.5.1 Tax Allocation of Individual Subclass Payments. 33% of each
4 Participating Class Member's Individual Subclass Payment will be allocated to
5 settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to
6 tax withholding and will be reported on an IRS W-2 Form. The remaining 67% of
7 each Participating Class Member's Individual Subclass Payment will be allocated
8 to settlement of claims for interest and penalties (the "Non-Wage Portion"). The
9 Non-Wage Portions are not subject to wage withholdings and will be reported on
10 IRS 1099 Forms. Participating Class Members assume full responsibility and
11 liability for any employee taxes owed on their Individual Class Payment.

12 3.2.6 To the LWDA and PAGA Group Members: PAGA Allocation in the amount
13 of \$300,000.00 to be paid from the Gross Settlement Amount, with 75% (\$225,000.00)
14 allocated to the LWDA PAGA Payment and 25% (\$75,000.00) allocated to the Individual
15 PAGA Payments.

16 3.2.6.1 The Administrator will calculate each Individual PAGA Payment
17 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA
18 Penalties (\$75,000.00) by the total number of PAGA Pay Periods worked by all
19 Aggrieved Employees during the PAGA Period and (b) multiplying the result by
20 each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full
21 responsibility and liability for any taxes owed on their Individual PAGA Payment.
22 The Administrator will issue a 1099 to each class member for the non-wage portion
23 of any payment received pursuant to this settlement, including Individual PAGA
24 Payment(s).

25 3.2.6.2 If the Court approves PAGA Penalties of less than the amount
26 requested, the Administrator will allocate the remainder to the Net Settlement
27 Amount.

28 3.2.7 To the LWDA and PAGA Subclass Members: PAGA Subclass Allocation

1 in the amount of \$75,000.00, to be paid from the Gross Settlement Amount, with 25%
2 (\$18,750) allocated to the Aggrieved Employees for Individual PAGA Subclass Payments
3 and 75% (\$56,250) allocated to the LWDA.

4 3.2.7.1 The Administrator will calculate each Individual PAGA Payment
5 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA
6 Subclass Allocation (\$75,000.00) by the total number of PAGA Pay Periods worked
7 by all Aggrieved Employees during the PAGA Period and (b) multiplying the result
8 by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume
9 full responsibility and liability for any taxes owed on their Individual PAGA
10 Payment. The Administrator will issue a 1099 to each class member for the non-
11 wage portion of any payment received pursuant to this settlement, including
12 Individual PAGA Payment(s).

13 3.2.7.2 If the Court approves PAGA Subclass Allocation of less than the
14 amount requested, the Administrator will allocate the remainder to the Net
15 Settlement Amount.

16 3.2.8 To Each Participating FLSA Subclass Member: FLSA Subclass Allocation
17 in the amount of \$100,000.00, to be paid from the Gross Settlement Amount. Each
18 Individual FLSA Subclass Payment shall be calculated by (a) dividing the FLSA Subclass
19 Allocation by the total number of FLSA Subclass Period Workweeks worked by all FLSA
20 Subclass Members during the FLSA Subclass Period and (b) multiplying the result by each
21 FLSA Subclass Member's FLSA Subclass Period Workweeks.

22 3.2.8.1 Tax Allocation of Individual FLSA Subclass Payments. 33% of
23 each FLSA Subclass Member's Individual FLSA Subclass Payment will be
24 allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are
25 subject to tax withholding and will be reported on an IRS W-2 Form. The remaining
26 67% of each FLSA Subclass Member's Individual FLSA Subclass Payment will be
27 allocated to settlement of claims for interest and penalties (the "Non-Wage
28 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be

1 reported on IRS 1099 Forms. Participating FLSA Subclass Members assume full
2 responsibility and liability for any employee taxes owed on their Individual FLSA
3 Subclass Payment.

4 **4. SETTLEMENT FUNDING AND PAYMENTS.**

5 4.2 Class Data. Not later than 15 calendar days after the Court grants Preliminary
6 Approval of the Settlement, SCPMG will deliver the Class Data to the Administrator, in the form
7 of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator
8 must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement
9 and for no other purpose, and restrict access to the Class Data to Administrator employees who
10 need access to the Class Data to effect and perform under this Agreement. SCPMG has a continuing
11 duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member
12 identifying information and to provide corrected or updated Class Data as soon as reasonably
13 feasible. Without any extension of the deadline by which SCPMG must send the Class Data to the
14 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
15 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

16 4.3 Funding of Gross Settlement Amount. SCPMG shall fully fund the Gross Settlement
17 Amount, and also fund the amounts necessary to fully pay SCPMG's share of payroll taxes by
18 transmitting the funds to the Administrator no later than 15 calendar days after the Effective Date.
19 The Administrator shall advise SCPMG of this amount as soon as reasonably possible.

20 4.4 Payments from the Gross Settlement Amount. Within 10 business days after
21 SCPMG funds the Gross Settlement Amount, the Administrator will mail checks for all Individual
22 Class Payments, all Individual Subclass Payments, all Individual PAGA Group Payments, all
23 Individual PAGA Subclass Payments, the LWDA PAGA Payment, the LWDA PAGA Subclass
24 Payment, all Individual FLSA Subclass Payments, the Administration Expenses Payment, the Class
25 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
26 Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class
27 Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not
28 precede disbursement of Individual Class Payments and Individual PAGA Payments.

1 4.4.1 The Administrator will issue checks for the Individual Class Payments,
2 Individual Subclass Payments, Individual PAGA Group Payments, Individual PAGA
3 Subclass Payments, and Individual FLSA Subclass Payments and send them to the Class
4 Members/Subclass Members/PAGA Group Members/PAGA Subclass Members/FLSA
5 Subclass Members via First Class U.S. Mail, postage prepaid. The face of each check shall
6 prominently state the date (not less than 180 days after the date of mailing) when the check
7 will be voided. The Administrator will cancel all checks not cashed by the void date. The
8 Administrator will send checks for Individual Settlement Payments to all Participating Class
9 Members (including those for whom Class Notice was returned undelivered). The
10 Administrator will send checks for Individual PAGA Payments to all PAGA Group
11 Members and Individual PAGA Subclass Payments to all PAGA Subclass Members,
12 including Non-Participating Class Members who qualify as PAGA Group Members or
13 PAGA Subclass Members (including those for whom Class Notice was returned
14 undelivered). The Administrator may send Participating Class Members a single check
15 combining the payments referenced above. Before mailing any checks, the Settlement
16 Administrator must update the recipients' mailing addresses using the National Change of
17 Address Database.

18 4.4.2 The Administrator must conduct a Class Member Address Search for all
19 Class Members whose checks are returned undelivered without United States Postal Service
20 ("USPS") forwarding address. Within 7 days of receiving a returned check the
21 Administrator must re-mail checks to the USPS forwarding address provided or to an
22 address ascertained through the Class Member Address Search. The Administrator need not
23 take further steps to deliver checks to Class Members whose re-mailed checks are returned
24 as undelivered. The Administrator shall promptly send a replacement check to any Class
25 Member whose original check was lost or misplaced, as requested by the Class Member
26 prior to the void date.

27 4.4.3 For any Class Member/Subclass Member/PAGA Group Member/PAGA
28 Subclass Member/FLSA Subclass Member whose check is uncashed and cancelled after the

void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member/Subclass Member/PAGA Group Member/PAGA Subclass Member/FLSA Subclass Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).

4.4.4 The payments referenced in this section shall not obligate SCPMG to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when SCPMG fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments as confirmed by the Administrator, Plaintiff, Class Members, Class Counsel, Aggrieved Employees, and the LWDA on behalf of the State of California will release claims against all Released Parties as follows:

5.1 Plaintiff Coffey's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences through the date of Final Approval. ("Plaintiff's Release.") Plaintiff Coffey's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Plaintiff Coffey acknowledges that he may discover facts or law different from, or in addition to, the facts or law that Plaintiff Coffey now know or believe to be true but agree, nonetheless, that his Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff Coffey expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY
2 HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER
3 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4 5.1.2 Plaintiff Lukofnak. Plaintiff Lukofnak represents that she has additional
5 individual, non-wage and hour claims against Defendant. Plaintiff Lukofnak is separately
6 settling these individual claims and in exchange is providing a general release of such
7 claims. In addition to the Gross Settlement Amount, Plaintiff Lukofnak will also separately
8 be paid for resolution of her individual claims as set forth in a separate confidential
9 individual settlement agreement. The individual settlement to be paid to Plaintiff Lukofnak
10 is in addition to the Gross Settlement Amount and will be memorialized in a confidential
11 individual settlement agreement that will be separate from this Agreement. If the Court
12 requires the Parties to submit the terms of the individual settlement agreement to obtain
13 approval of this Settlement, the Parties agree that the individual settlement agreement will
14 be submitted in camera to the Court.

15 5.2 Release by Participating Class Members: All Participating Class Members, on
16 behalf of themselves and their respective former and present representatives, agents, attorneys,
17 heirs, administrators, successors and assigns, release Released Parties from any and all claims that
18 occurred during the Class Period based on the facts that are or could have been alleged in the
19 Operative Complaint, including debts, liabilities, demands, obligations, penalties, premium pay,
20 guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind
21 or nature, whether known or unknown, contingent or accrued, under any legal theory under federal
22 and state law for any alleged failure to pay all wages due (including minimum wage and overtime
23 wages), claims regarding rounding, grace periods, shift tolerance, failure to pay for all hours worked
24 (including off-the clock work), failure to provide meal and rest periods, short/late meal and rest
25 periods, failure to relieve of all duties during meal and rest periods, combining of meal and rest
26 periods, that Defendant's exemption permit from the DLSE is not valid or does not apply to Class
27 Members, failure to timely pay wages and final wages, failure to properly calculate the regular rate
28 of pay, failure to pay or properly calculate meal period premiums, failure to pay or properly

1 calculate paid sick leave, including paid sick leave under the Healthy Workplaces, Healthy Families
2 Act, donning and doffing, pre or post-shift testing or inspections, health status related activities
3 including testing, reporting, and queuing for testing, reporting time pay, failure to furnish accurate
4 wage statements including claims derivative and/or related to these claims, liquidated damages,
5 conversion of wages, that the Labor Code Section 514 exemption does not apply to Defendant's
6 employees, pre and post-shift work and record-keeping violations, up to and including the date of
7 preliminary approval by the Court. This Release shall include all claims that occurred during the
8 Class Period based on the facts that are or could have been alleged in the Operative Complaint and
9 theories arising under the California Labor Code, wage orders, and applicable regulations,
10 including Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 245 et
11 seq., 510, 511, 512, 515, 517, 551, 552, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
12 1198.5, and 1199, all claims and theories arising under Labor Code Section 2802 except for claims
13 related solely to working from home under Labor Code Section 2802 as well as claims under
14 Business and Professions Code section 17200 et seq. that are known and unknown based on the
15 facts in the Operative Complaint underlying the alleged violations of the above Labor Code
16 provisions, as alleged in the Action. As to the Released Claims *only*, each Class Member waives
17 all rights provided by California Civil Code section 1542, which states:

18 A general release does not extend to claims that the creditor or releasing party does not
19 know or suspect to exist in his or her favor at the time of executing the release and that, if
20 known by him or her, would have materially affected his or her settlement with the debtor
21 or released party.

22 The release shall run through the Class Period (the "Release Period"). Defendant shall have the
23 option to extend the Release Period paying an additional proportionate amount based on the number
24 of additional pay periods. Class Members who do not submit a timely and valid request for
25 exclusion from the Settlement shall be deemed to have fully released all Class Members' Released
26 Claims. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not
27 release any other claims, including claims for vested benefits, wrongful termination, violation of
28 the Fair Employment and Housing Act, unemployment insurance, disability, social security,

workers' compensation or claims based on facts occurring outside the Class Period.

5.3 Release By Subclass Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from any and all claims that occurred during the Subclass Period based on the facts that are or could have been alleged in the Operative Complaint, including debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law related to paid sick leave under the Healthy Workplaces, Healthy Families Act or reimbursement for business expenses.

5.4 Release by FLSA Subclass Members. FLSA Subclass Members who timely cash or otherwise negotiate their settlement payment check will be deemed to have opted into the Action for purposes of the FLSA and, as to those Class Members, the Released Claims include any and all claims the Class Members may have under the FLSA arising under or related to the alleged claims during the FLSA Subclass Period. Only those FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims. This release excludes the release of claims not permitted by law. The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the [Action], elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement."

5.5 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for civil penalties under PAGA, whether known or unknown, to recover wages, damages, penalties, attorneys' fees,

1 litigation costs, restitution, or equitable relief, which all Aggrieved Employees, the LWDA, and
2 any other representative, proxy, or agent thereof, had, or may claim to have, that were alleged or
3 could have been alleged in the Action based upon the facts alleged and legal assertions alleged,
4 whether or not specifically delineated as a claim or cause of action in the Action through the end
5 of the PAGA Period, including but not limited to those alleged in the PAGA Notices and the
6 Operative Complaint in the Action, including claims that reasonably arise out of or arise in
7 connection with the claims and facts that are or could have been alleged in the Action, and any
8 claims which could have reasonably been asserted in the Action arising from the alleged facts
9 and/or primary rights alleged to have been invaded (“PAGA Released Claims”). The PAGA
10 Released Claims are further released by Plaintiffs in their representative capacity as authorized
11 proxies and agent for the State of California and the LWDA and as private attorneys general acting
12 on behalf of themselves and the Aggrieved Employees, for civil penalties under the PAGA, based
13 on any claim that arises under the California Labor Code and forever bar the LWDA, and any other
14 representative, proxy, or agent thereof, including, but not limited to, any and all allegedly aggrieved
15 employees, from pursuing any action against the Released Parties for the PAGA Released Claims.

16 5.6 Release By PAGA Subclass Members. All PAGA Subclass Members, on behalf of
17 themselves and their respective former and present representatives, agents, attorneys, heirs,
18 administrators, successors and assigns, release Released Parties from any and all claims that
19 occurred during the PAGA Subclass Period based on the facts that are or could have been alleged
20 in the Operative Complaint, including debts, liabilities, demands, obligations, penalties, premium
21 pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of whatever
22 kind or nature, whether known or unknown, contingent or accrued, under any legal theory under
23 federal and state law related to paid sick leave under the Healthy Workplaces, Healthy Families
24 Act or reimbursement for business expenses.

25 **6. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree that Class Counsel will
26 prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that
27 complies with the Court’s current checklist for Preliminary Approvals, subject to approval by
28 SCPMG’s counsel.

1 6.1 Plaintiffs' Responsibilities. Class Counsel will prepare Plaintiffs' amended motion
2 for preliminary approval. Not later than three (3) days prior to the submission of the motion for
3 preliminary approval of this Settlement Agreement to the Court, Class Counsel will submit a near-
4 final draft thereof (including all supporting papers and proposed order) to counsel for Defendant
5 for their review and comment.

6 6.2 Responsibilities of Counsel. As soon as practicable after execution of this
7 Settlement Agreement, the Class Representatives and Class Counsel shall apply to the Court for
8 the entry of a preliminary approval order which would accomplish the following:

9 a. Schedule a hearing (the "**Final Approval Hearing**") on the question of
10 whether the Settlement, including, *inter alia*, the payment of Class Counsel Fees Payment, Class
11 Counsel Litigation Expenses Payment, Class Representative Service Payments, FLSA Allocation,
12 and PAGA Amount should be finally approved as fair, reasonable, and adequate, and finally
13 resolving any outstanding issues or disputes remaining from the administration of the notice of the
14 settlement;

15 b. Approve, as to form and content, the proposed Notice;

16 c. Direct the mailing of the Notice by first class mail to the Class Members;

17 d. Preliminarily approve the Settlement and monetary allocations for
18 awards/payments of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
19 Class Representative Service Payments, Administration Expenses Payment, PAGA Allocation, and
20 PAGA Subclass Allocation, subject to the final review and approval by the Court;

21 e. Preliminarily approve Rust Consulting as the Settlement Administrator;
22 Class Counsel shall be responsible for ensuring that all required submittals and notifications to the
23 LWDA under PAGA regarding this Settlement are made by Plaintiffs at the same time that this
24 Agreement is submitted to the Court for Preliminary Approval.

25 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
26 Preliminary Approval, Class Counsel and Defense Counsel will expeditiously work together on
27 behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the
28 disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval

on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Rust Consulting to serve as the Administrator and verified that, as a condition of appointment, Rust Consulting agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than fifteen (15) business days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any payment payable to the Class Member, and the number of Class Period Workweeks, PAGA Pay Periods, PAGA Subclass Pay Periods, and FLSA Subclass Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address

1 database.

2 7.4.3 Not later than three (3) business days after the Administrator's receipt of any Class
3 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
4 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
5 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
6 the most current address obtained. The Administrator has no obligation to make further attempts to
7 locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second
8 time.

9 7.4.4 The deadlines for Class Members' written objections to the class component of the
10 Settlement, challenges to Class Period Workweeks and/or PAGA Pay Periods and Requests for
11 Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the
12 Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the
13 Class Member of the extended deadline with the re-mailed Class Notice.

14 7.4.5 If the Administrator, SCPMG, or Class Counsel is contacted by or otherwise
15 discovers any persons who believe they should have been included in the Class Data and should
16 have received Class Notice, the Parties will expeditiously meet and confer in person or by
17 telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If
18 the Parties agree, such persons will be Class Members entitled to the same rights as other Class
19 Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring
20 them to exercise options under this Agreement not later than 14 days after receipt of Class Notice,
21 or the deadlines in the Class Notice, which ever is later.

22 7.5 Requests for Exclusion (Opt-Outs).

23 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
24 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
25 Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an
26 additional 14 days for Class Members whose Class Notice is re-mailed). A Request for
27 Exclusion is a letter from a Class Member or his/her/their representative that reasonably
28 communicates the Class Member's election to be excluded from the Settlement and includes

1 the Class Member's name, address and email address or telephone number. To be valid, a
2 Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
3 Deadline.

4 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because
5 it fails to contain all the information specified in the Class Notice. The Administrator shall
6 accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
7 identity of the person as a Class Member and the Class Member's desire to be excluded. If
8 the Administrator has reason to question the authenticity of a Request for Exclusion, the
9 Administrator may demand additional proof of the Class Member's identity. The
10 Administrator's determination of authenticity shall be final and not appealable or otherwise
11 susceptible to challenge.

12 7.5.3 Every Class Member who does not submit a timely and valid Request for
13 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to
14 all benefits and bound by all terms and conditions of the Settlement, including the
15 Participating Class Members' Release under Paragraph 5.2 of this Agreement, regardless of
16 whether the Participating Class Member actually receives the Class Notice or objects to the
17 Settlement.

18 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion
19 is a Non-Participating Class Member and shall not receive an Individual Class Payment, an
20 Individual Subclass Payment, or an FLSA Subclass Payment or have the right to object to
21 the class action components of the Settlement. Because future PAGA claims are subject to
22 claim preclusion upon entry of the Judgment, Non-Participating Class Members who are
23 Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this
24 Agreement and are eligible for an Individual PAGA Payment and an Individual PAGA
25 Subclass Payment.

26 7.6 Challenges to Calculation of Class Period/PAGA Pay Periods. Each Class Member
27 shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for
28 Class Members whose Class Notice is re-mailed) to challenge the number of Class Period

1 Workweeks, FLSA Subclass Period Workweeks, PAGA Pay Periods, and PAGA Subclass Pay
2 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
3 challenge the allocation by communicating with the Administrator via fax, email or mail. The
4 Administrator must encourage the challenging Class Member to submit supporting documentation.
5 In the absence of any contrary documentation, the Administrator is entitled to presume that the
6 Workweeks/Pay Periods contained in the Class Notice are correct so long as they are consistent
7 with the Class Data. The Administrator shall promptly provide copies of all challenges to the
8 calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel along with
9 the Administrator's preliminary determination with respect to any such challenges.

10 7.7 Objections to Settlement.

11 7.7.1 Only Participating Class Members may object to the class action
12 components of the Settlement and/or this Agreement, including contesting the fairness of
13 the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
14 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

15 7.7.2 Participating Class Members may send written objections to the
16 Administrator, by fax, email or mail. In the alternative, Participating Class Members may
17 appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final
18 Approval Hearing. A Participating Class Member who elects to send a written objection to
19 the Administrator must do so not later than 45 days after the Administrator's mailing of the
20 Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-
21 mailed).

22 7.7.3 Non-Participating Class Members have no right to object to any of the class
23 action components of the Settlement.

24 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks
25 to be performed or observed by the Administrator contained in this Agreement or otherwise.

26 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will
27 establish and maintain and use an internet website to post information of interest to Class
28 Members including the date, time and location for the Final Approval Hearing and copies

1 of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval,
2 the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees
3 Payment, Class Counsel Litigation Expenses Payment and Class Representative Service
4 Payment, the Final Approval and the Judgment. The Administrator will also maintain and
5 monitor an email address and a toll-free telephone number to receive Class Member calls,
6 faxes and emails.

7 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
8 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
9 Not later than ten (10) business days after the expiration of the deadline for submitting
10 Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense
11 Counsel containing (a) the names and other identifying information of Class Members who
12 have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and
13 other identifying information of Class Members who have submitted invalid Requests for
14 Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether
15 valid or invalid).

16 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written
17 reports to Class Counsel and Defense Counsel that, among other things, tally the number
18 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
19 Exclusion (whether valid or invalid) received, objections received, challenges to
20 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual
21 Class Payments, Individual Subclass Payments, Individual FLSA Subclass Payments,
22 Individual PAGA Payments, and Individual PAGA Subclass Payments (“Weekly Report”).
23 The Weekly Reports should include the Administrator’s assessment of the validity of
24 Requests for Exclusion and attach copies of all Requests for Exclusion and Objections
25 received.

26 7.8.4 Class Period Workweek and/or PAGA Pay Periods Challenges. The
27 Administrator has the authority to address and make final decisions consistent with the
28 terms of this Agreement on all Class Member challenges over the calculation of Workweek

1 and/or Pay Periods. The Administrator's decision shall be final and not appealable or
2 otherwise susceptible to challenge.

3 7.8.5 Administrator's Declaration. Not later than 5 days before the date by which
4 Plaintiffs are required to file the Motion for Final Approval of the Settlement, the
5 Administrator shall provide to Class Counsel and Defense Counsel, a signed declaration
6 suitable for filing in Court attesting to its due diligence and compliance with all of its
7 obligations under this Agreement, including, but not limited to, its mailing of Class Notices,
8 the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate
9 Class Members, the total number of Requests for Exclusion from Settlement it received
10 (both valid or invalid), the number of written objections and attach the Exclusion List. The
11 Administrator will supplement its declaration as needed or requested by the Parties and/or
12 the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in
13 Court.

14 7.8.6 Final Report by Settlement Administrator. Within 10 days after the
15 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will
16 provide Class Counsel and Defense Counsel with a final report detailing its disbursements
17 by employee identification number only of all payments made under this Agreement. At
18 least 15 days before any deadline set by the Court, the Administrator will prepare, and
19 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
20 Court attesting to its disbursement of all payments required under this Agreement. Class
21 Counsel is responsible for filing the Administrator's declaration in Court.

22 8. **SCPMG RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion
23 identified in the Exclusion List exceeds 2% of the total of all Class Members, SCPMG may, but is
24 not obligated to, elect to withdraw from the Settlement. The Parties agree that, if SCPMG
25 withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that
26 neither Party will have any further obligation to perform under this Agreement; provided, however,
27 SCPMG will remain responsible for paying all Settlement Administration Expenses incurred to that
28 point. SCPMG must notify Class Counsel and the Court of its election to withdraw not later than 7

1 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will
2 have no effect.

3 9. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
4 Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement
5 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
6 subdivision (l), a Proposed Final Approval Order, and a proposed Judgment (collectively “Motion
7 for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel not
8 later than 5 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
9 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
10 disagreements concerning the Motion for Final Approval.

11 9.1 Response to Objections. Each Party retains the right to respond to any objection
12 raised by a Participating Class Member, including the right to file responsive documents in Court
13 no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or
14 accepted by the Court.

15 9.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
16 Approval on any material change to the Settlement (including, but not limited to, the scope of
17 release to be granted by Class Members), the Parties will expeditiously work together in good faith
18 to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval.
19 The Court’s decision to award less than the amounts requested for the Class Representative Service
20 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
21 Administration Expenses Payment, PAGA Allocation and/or PAGA Subclass Allocation shall not
22 constitute a material modification to the Agreement within the meaning of this paragraph.

23 9.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
24 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of
25 (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and
26 (iii) addressing such post-Judgment matters as are permitted by law.

27 9.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
28 conditions of this Agreement, the Parties, their respective counsel and all Participating Class

Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

9.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

11. **ADDITIONAL PROVISIONS.**

11.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended to or should be construed as an admission by SCPMG that any of the allegations in the Operative Complaint have merit or that SCPMG has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that SCPMG's defenses in the Action have merit. The Parties agree that class certification and

1 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
2 grant Preliminary Approval, Final Approval or enter Judgment, SCPMG reserves the right to
3 contest certification of any class for any reasons, and SCPMG reserves all available defenses to the
4 claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds
5 available and to contest SCPMG's defenses. The Settlement, this Agreement, and the Parties'
6 willingness to settle the Action will have no bearing on, and will not be admissible in connection
7 with, any litigation (except for proceedings to enforce or effectuate the Settlement and this
8 Agreement).

9 11.2 No Publicity. Plaintiffs and Class Counsel shall not publicize the settlement on their
10 websites, in advertising/marketing materials or on social media, other than filing documents with
11 the Court. The Parties and their counsel agree that they will not issue any press releases or initiate
12 any contact with the media about the fact, amount, or terms of the settlement. If counsel for any
13 party receives an inquiry about the settlement from the media, counsel may respond only after the
14 motion for approval of the settlement has been filed and only by confirming the accurate terms of
15 the settlement. Nothing in this provision shall prevent Defendant from making any required
16 disclosure. Nothing in this provision shall prevent Plaintiffs' counsel from communicating with
17 settlement class members about the settlement.

18 11.3 No Solicitation. The Parties separately agree that they and their respective counsel
19 and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
20 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability
21 to communicate with Class Members in accordance with Class Counsel's ethical obligations owed
22 to Class Members.

23 11.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
24 Agreement together with its attached exhibits shall constitute the entire agreement between the
25 Parties relating to the Settlement, superseding any and all oral representations, warranties,
26 covenants or inducements made to or by any Party.

27 11.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
28 represent that they are authorized by Plaintiffs and SCPMG, respectively, to take all appropriate

1 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
2 terms, and to execute any other documents reasonably required to effectuate the terms of this
3 Agreement including any amendments to this Agreement.

4 11.6 Cooperation. The Parties and their counsel will cooperate with each other and use
5 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
6 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
7 as requested by the Court. In the event the Parties are unable to agree upon the form or content of
8 any document necessary to implement the Settlement, or on any modification of the Agreement
9 that may become necessary to implement the Settlement, the Parties will seek the assistance of a
10 mediator and/or the Court for resolution.

11 11.7 No Prior Assignments. The Parties separately represent and warrant that they have
12 not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or
13 encumber to any person or entity and portion of any liability, claim, demand, action, cause of action
14 or right released and discharged by the Party in this Settlement.

15 11.8 No Tax Advice. Neither Plaintiff, Class Counsel, SCPMG, nor Defense Counsel are
16 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
17 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
18 10, as amended) or otherwise.

19 11.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
20 modified, changed or waived only by an express written instrument signed by all Parties or their
21 representatives and approved by the Court.

22 11.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure
23 to the benefit of, the successors of each of the Parties.

24 11.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
25 governed by and interpreted according to the internal laws of the State of California, without regard
26 to conflict of law principles.

27 11.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
28 of this Agreement. This Agreement will not be construed against any Party on the basis that the

1 Party was the drafter or participated in the drafting.

2 11.13 Confidentiality. To the extent permitted by law, all agreements made and orders
3 entered during Action and in this Agreement relating to the confidentiality of information shall
4 survive the execution of this Agreement.

5 11.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to
6 Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class
7 Counsel by SCPMG in connection with the mediation, other settlement negotiations, or in
8 connection with the Settlement, may be used only with respect to this Settlement, and no other
9 purpose, and may not be used in any way that violates any existing contractual agreement, statute
10 or California Rules of Court rule.

11 11.15 Headings. The descriptive heading of any section or paragraph of this Agreement is
12 inserted for convenience of reference only and does not constitute a part of this Agreement.

13 11.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement
14 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
15 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

16 11.17 Notice. All notices, demands or other communications between the Parties in
17 connection with this Agreement will be in writing and deemed to have been duly given as of the
18 third business day after mailing by United States mail, or the day sent by email or messenger,
19 addressed as follows:

20 **To Plaintiffs:**

21 Eric Yaeckel
22 Ryan Kuhn
23 Sullivan & Yaeckel Law Group, APC
24 2330 Third Avenue
25 San Diego, CA 92101

26 Blumenthal, Nordrehaug Bhowmik De Blouw LLP
27 Norman Blumenthal
28 Kyle Nordrehaug
2255 Calle Clara
La Jolla, CA 92037

To Defendant:

1 Christian J. Rowley
2 Kerry M. Friedrichs
3 Parnian Vafaenia
4 Seyfarth Shaw LLP
5 560 Mission Street, 31st Floor
6 San Francisco, CA 94105

7 11.18 Execution in Counterparts. This Agreement may be executed in one or more
8 counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this
9 Agreement shall be accepted as an original. All executed counterparts and each of them will be
10 deemed to be one and the same instrument if counsel for the Parties will exchange between
11 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
12 the existence and contents of this Agreement.

13 11.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the
14 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree
15 that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330
16 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the
17 entire period of this settlement process.

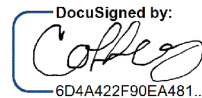
18 11.20 Amendment of Complaint and Letter to LWDA. Plaintiff Coffey agrees to amend
19 his Complaint to add Lukofnak as a plaintiff. In amending his Complaint, Plaintiff Coffey will also
20 modify the class definition and PAGA group definition to encompass the definition of Class
21 Members and PAGA Group Members above and will add the claims and theories alleged in the
22 Lukofnak complaints, claims under the Fair Labor Standards Act, and other claims and theories
23 encompassed by the settlement and release below to ensure that all included Class Members, claims
24 and theories are clearly articulated and covered. Defendant will stipulate to the filing of an amended
25 Complaint (the "Operative Complaint"). Defendant will agree not to remove the matter to federal
26 court. Plaintiff Coffey further agrees to amend his PAGA Notice to the LWDA to add the claims
27 and theories alleged in the Lukofnak PAGA complaint and other claims and theories encompassed
28 by the settlement and release below to ensure that all included PAGA claims and theories are clearly
articulated and covered. Within 14 days after Plaintiff Coffey amends his Complaint as noted
above, Plaintiff Lukofnak will request to have her claims dismissed without prejudice.

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PLAINTIFF DAMON COFFEY

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Damon Coffey

Date: _____

PLAINTIFF BRANDIE LUKOFNAK

Brandie Lukofnak

Date: _____

DEFENDANT SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP

By: _____
NAME

Dated: January __, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: _____
Kyle Nordrehaug
Attorneys for Plaintiff Brandie Lukofnak

1 Dated: January 18, 2023

SULLIVAN & YAECKEL LAW GROUP, APC

2 By: Ryan Kuhn

3 William B. Sullivan

4 Eric K. Yaeckel

5 Ryan Kuhn

6 Attorneys for Plaintiff Damon Coffey and Brandie
7 Lukofnak

8
9
10
11 Dated: January __, 2023

SEYFARTH SHAW LLP

12 By: _____

13 Christian J. Rowley

14 Kerry M. Friedrichs

15 Parnian Vafaeenia

16 Attorney for Defendant SOUTHERN
17 CALIFORNIA PERMANENTE MEDICAL
18 GROUP

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Date: _____

PLAINTIFF DAMON COFFEY

Damon Coffey

Date: _____

PLAINTIFF BRANDIE LUKOFNAK

Brandie Lukofnak

Date: JAN 18, 2024

DEFENDANT SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP

By: NAME

Dated: January __, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: _____
Kyle Nordrehaug

Attorneys for Plaintiff Brandie Lukofnak

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Dated: January __, 2023

SULLIVAN & YAECKEL LAW GROUP, APC

By: _____
William B. Sullivan
Eric K. Yaeckel
Ryan Kuhn

Attorneys for Plaintiff Damon Coffey and Brandie
Lukofnak

Dated: January 19, 2024

SEYFARTH SHAW LLP

By:  _____
Christian J. Rowley
Kerry M. Friedrichs
Parnian Vafaenia

Attorney for Defendant SOUTHERN
CALIFORNIA PERMANENTE MEDICAL
GROUP

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Date: _____

PLAINTIFF DAMON COFFEY

Damon Coffey

Date: Jan 18, 2024

PLAINTIFF BRANDIE LUKOFNAK


brandie lukofnak (Jan 18, 2024 20:36 PST)

Brandie Lukofnak

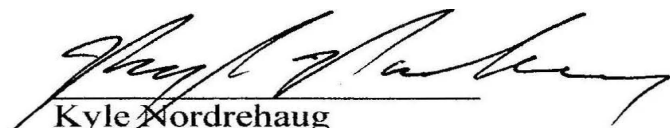
Date: _____

DEFENDANT SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP

By: _____
NAME

Dated: January 19, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: 

Kyle Nordrehaug

Attorneys for Plaintiff Brandie Lukofnak

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

DAMON COFFEY and BRANDIE LUKOFNAK, individually, and on behalf of other members of the public similarly situated, Plaintiffs, vs. SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, a California partnership and DOES 1-10, inclusive, Defendants	CASE No. 37-2020-00029409-CU-OE-CTL JUDGE: Honorable Keri Katz DEPARTMENT: C-74 NOTICE OF CLASS ACTION SETTLEMENT
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I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *Damon Coffey and Brandie Lukofnak v. Southern California Permanente Medical Group*, Case No. 37-2020-00029409-CU-OE-CTL (the “Action”).

This notice is to inform you of the proposed Settlement of the Action. The notice is also intended to (i) describe the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you; and (ii) advise you of your rights and options with respect to the Settlement.

You are receiving this notice by order of the Court because the records of Southern California Permanente Medical Group (hereinafter “SCPMG”), indicate that you are a current or former non-exempt employee of SCPMG, who worked in California during the time period of August 21, 2016 to the present. As a result, **you are eligible to receive a portion of the settlement amount.**

This is **not** a notice of a lawsuit against you. **You are not being sued.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don’t Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the FLSA Payment, the Subclass Payment (if any), the PAGA Allocation, and the PAGA Subclass Allocation (if any). In exchange, you will give up your right to assert the wage claims against SCPMG that are covered by this Settlement (set forth in Section IV, below). Your estimated Individual Class Payment is << [REDACTED] >>. Additional information is set forth below in Section IV, below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don’t want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement and the Subclass Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement, the Subclass Settlement, or the FLSA Settlement and you will not be bound by the Class Settlement, the Subclass Settlement, or the FLSA Subclass Settlement. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section V of this Notice.
The Response	

Deadline is _____.	However, you cannot opt-out of the PAGA portion or the PAGA Subclass portion of the proposed Settlement. If you are a PAGA Group Member and/or a PAGA Subclass Member and exclude yourself, you will still be paid your share of the PAGA Allocation and/or PAGA Subclass Allocation and will remain subject to the Released PAGA Claims and Released PAGA Subclass Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by the Response Deadline (_____)	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section VIII of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the San Diego County Superior Court, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, in Department 74 before Judge Keri Katz. This hearing may change as explained below in Section 7. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section VIII of this Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods Written Challenges Must be Submitted by the Response Deadline (_____)	The amount of your Individual Class Payment, PAGA Group Payment, PAGA Subclass Payment, and FLSA Subclass Payment (if any) depend on how many workweeks and/or pay periods you worked during the relevant timeframes. The number of Class Period workweeks and pay periods you worked according to SCPMG’s records is stated in Section IV of this Notice. If you disagree with these numbers, you must challenge them by _____. See Section IV of this Notice.

II. WHAT IS THE LAWSUIT ABOUT?

In August, 2020, a former SCPMG employee in California filed a lawsuit (the “Action”) in which he sought penalties for alleged violations of California wage-and-hour laws as to himself and other alleged “aggrieved employees.” In January 2021, Plaintiff amended his complaint to add claims on behalf of a class of all current and former non-exempt employees of SCPMG in California.

The Action alleges that the class members were not paid regular, minimum, or overtime wages or final wages upon separation from employment, as required by California law; were not provided meal and rest periods under the California Labor Code and Wage Orders; were not reimbursed for all business-related expenses; and, were not provided wage statements with information specified in the California Labor Code. The lawsuit also seeks penalties under California’s Private Attorneys General Act (“PAGA”) set forth in California Labor Code §§ 2699 *et seq.*

The individuals who are suing SCPMG (Damon Coffey and Brandie Lukofnak) are referred to in this document as “Plaintiffs.” Plaintiffs’ attorneys, Sullivan & Yaeckel Law Group, APC and Blumenthal, Nordrehaug,

Bhowmik De Blouw, LLP, have been litigating the Action in State Court prior to this settlement.

SCPMG maintains that class members have been paid all monies that were due to them, maintains that it has complied with California's wage-and-hour laws, and denies all wrongdoing.

The Court has not ruled on whether Plaintiffs' allegations have any merit. However, in order to avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiffs and SCPMG have negotiated a settlement whereby SCPMG has agreed to pay up to **\$9,970,000.00** to resolve the matter. As a Class Member, Subclass Member, FLSA Subclass Member, PAGA Group Member, and/or PAGA Subclass Member, you are eligible to receive a portion of this amount.

This settlement is **not** an admission by SCPMG of any liability.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All non-exempt persons who were employed by SCPMG in the State of California at any time during the Class Period (defined as July 8, 2020 through **[insert the earlier of the date of preliminary approval or February 13, 2024]**) (the "Class Members").

All non-exempt persons who were employed by SCPMG in the State of California at any time during the Sub-Class Period (defined as August 21, 2016 through July 7, 2020) (The "Sub-Class Members").

All non-exempt persons who were employed by SCPMG in the State of California at any time from July 8, 2020 through **[insert the earlier of the date of preliminary approval or February 13, 2024]** (the "PAGA Group Members").

The "PAGA Subclass Members" consist of all non-exempt persons who were employed by SCPMG in the State of California at any time from June 23, 2019 through July 7, 2020 (the "PAGA Sub-Class Period").

All non-exempt persons who were employed by SCPMG in the State of California at any time from August 21, 2017 through **[insert date of preliminary approval]** (the "FLSA Subclass Members").

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the Parties' proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. SCPMG will pay up to **Nine Million Nine Hundred Seventy Thousand Dollars** (\$9,970,000.00) to settle the claims of all Class Members, Subclass Members, FLSA Subclass Members, PAGA Group Members, and/or PAGA Subclass Members.

B. An Administrator has been appointed by the Court to administer the settlement. The Administrator will pay from the \$9,970,000.00 settlement the following amounts: (1) Plaintiffs' counsel's attorneys' fees, up to one-third of the settlement value (or \$3,323,333.33); (2) Plaintiffs' counsel's costs of litigation, up to the amount of \$65,000.00; (3) The expenses of administering the settlement, up to the amount of \$123,000.00; (4) An enhancement award of up to \$20,000.00 (\$10,000.00 to each Plaintiff) for their role in pursuing the litigation; (5) A payment of \$225,000.00 to the California Labor & Workforce Development Agency, representing 75% of the \$300,000.00 allocated to the settlement of the claim for civil penalties under PAGA; and (6) A payment of \$75,000.00 to Aggrieved Employees, representing 25% of the \$300,000.00 allocated to the settlement of the claim for civil penalties under PAGA; (7) A payment of \$56,250.00 to the California Labor & Workforce Development Agency, representing 75% of the \$75,000.00 allocated to the PAGA Subclass; and (8) A payment of \$18,750.00 to Aggrieved Employees, representing 25% of the \$75,000.00 allocated to the PAGA Subclass; and (9) A payment of \$100,000.00 to the FLSA Sub-Class Members. The remainder of the \$9,970,000.00 will be paid to the Class Members in settlement of their individual claims (the "Class Payment").

C. The Class Payment will be divided among all Class Members based on the estimated number of weeks worked for SCPMG in California by each Class Member. That is, the Class Payment will be divided by the number of aggregate qualified weeks worked by all Class Members during the Class Period to produce a “Weekly Settlement Value.” A “qualified week” is any week in which a Class Member was employed by and performed worked for SCPMG in California during the Class Period (July 8, 2020 to [insert date of earlier of preliminary approval of February 13, 2024] as a non-exempt employee. If you do not opt out of the settlement, you will be eligible to receive a settlement payment in the amount of the total number of qualified weeks you worked for SCPMG during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings.

D. As to the “Subclass Members” members, each individual who was employed by SCPMG as a non-exempt employee in the State of California at any time during the Sub-Class Period (defined as August 21, 2016, through July 7, 2020)PAGA Sub-Class period will receive a “per person” payment in the amount of \$15.00 per person.

The FLSA Subclass Payment will be divided among all FLSA Subclass Members based on the estimated number of weeks worked for SCPMG in California by each FLSA Subclass Member. That is, the FLSA Subclass Allocation will be divided by the number of aggregate qualified weeks worked by all FLSA Subclass Members during the FLSA Class Period to produce a “FLSA Weekly Settlement Value.” A “qualified week” is any week in which a FLSA Class Member was employed by and performed worked for SCPMG in California during the FLSA Class Period (August 21, 2017, through _____ [insert date of preliminary approval]) as a non-exempt employee. If you do not opt out of the settlement, you will be eligible to receive a settlement payment in the amount of the total number of qualified weeks you worked for SCPMG during the FLSA Subclass Period multiplied by the FLSA Weekly Settlement Value, less applicable withholdings.

E. The PAGA Allocation will be allocated among Aggrieved Employees who performed work for SCPMG in California between July 8, 2020 and [the earlier of the date of preliminary approval or February 13, 2024] (the “PAGA Period”) as a non-exempt employee. Additionally, the PAGA Subclass Allocation will be allocated among PAGA Subclass Members who were employed by Defendant in the State of California at any time from June 23, 2019 through July 7, 2020 (the “PAGA Subclass Period”).

Each individual’s share of the PAGA Allocation will be determined based on the number of aggregate qualified pay periods worked by PAGA Group Members during the PAGA Period. Similarly, each individual’s share of the PAGA Subclass Allocation will be determined based on the number of aggregate pay periods worked by PAGA Subclass Members during the PAGA Subclass Period. PAGA Group Members and PAGA Subclass Members cannot opt out of the PAGA Payment or PAGA Subclass Payment or release of PAGA claims or PAGA Subclass Claims.

F. Corresponding to SCPMG’s records, you worked for SCPMG in the State of California as a non-exempt employee for approximately [INSERT NUMBER OF weeks] weeks during the Class Period, [] pay periods during the PAGA Period, [] pay periods during the PAGA Subclass Period, and [] workweeks during the FLSA Subclass Period. SCPMG’s records further indicate that you [worked/did not work] for SCPMG as a non-exempt employee in California during the Subclass Period. Your portion of the Settlement Payment will be based on the above information. If you believe the information above is incorrect, you may dispute this information by sending your corrections and any supporting documentation to the Administrator via U.S. Mail, at _____. Please be advised that the information listed above is presumed to be correct unless you prove otherwise.

The estimated value of each workweek for purposes of calculating Individual Class Payments to all Class Members is approximately: <<AMOUNT>>. The estimated value of each pay period for purposes of calculating Individual PAGA Payments to all PAGA Group Members is approximately: <<AMOUNT>>. The estimated value of each pay period for purposes of calculating Individual PAGA Payments to all PAGA Subclass Members is approximately: <<AMOUNT>>. The estimated value of each workweek for purposes of calculating Individual FLSA Subclass Payments to all FLSA Subclass Members is approximately: <<AMOUNT>>.

Your estimated total settlement amount is <<AMOUNT>>. This is only an estimate. Your actual share may change depending on the Court’s final ruling and the final number of participating Class Members.

Class Member Released Claims: If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will be deemed to have fully, finally, and forever released SCPMG and its current and former direct and indirect affiliates, other related business entities, parents, shareholders, and equity holders, and each of their respective divisions, subsidiaries, joint ventures, customers, partners, actual or alleged joint employers, officers, directors, employees, contractors, agents, principals, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers, other representatives or persons or entities acting by, through, under or in concert with any of forgoing, and each of forgoing's successors, predecessors, heirs, employee welfare benefit plans and pension, equity incentive, or deferred compensation plans under Section 401 of the Internal Revenue Code of 1954, as amended, and their trustees, administrators and other fiduciaries, and all persons acting by, through, under, or in concert with them, or any of them and any other persons that could be jointly liable with Defendant for any of the Released Claims ("Releasees") from any and all claims that occurred during the Class Period based on the facts that are or could have been alleged in the Operative Complaint, including debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), claims regarding rounding, grace periods, shift tolerance, failure to pay for all hours worked (including off-the clock work), failure to provide meal and rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, combining of meal and rest periods, that Defendant's exemption permit from the DLSE is not valid or does not apply to Class Members, failure to timely pay wages and final wages, failure to properly calculate the regular rate of pay, failure to pay or properly calculate meal period premiums, failure to pay or properly calculate paid sick leave, including paid sick leave under the Healthy Workplaces, Healthy Families Act, donning and doffing, pre or post-shift testing or inspections, health status related activities including testing, reporting, and queuing for testing, reporting time pay, failure to furnish accurate wage statements including claims derivative and/or related to these claims, liquidated damages, conversion of wages, that the Labor Code Section 514 exemption does not apply to SCPMG's employees, pre and post-shift work and record-keeping violations, up to and including the date of preliminary approval by the Court. This Release shall include all claims that occurred during the Class Period based on the facts that are or could have been alleged in the Operative Complaint and theories arising under the California Labor Code, wage orders, and applicable regulations, including Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 245 et seq., 510, 511, 512, 515, 517, 551, 552, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 1199, all claims and theories arising under Labor Code Section 2802 except for claims related solely to working from home under Labor Code Section 2802 as well as claims under Business and Professions Code section 17200 et seq. that are known and unknown based on the facts in the Operative Complaint underlying the alleged violations of the above Labor Code provisions, as alleged in the Action. As to the Released Claims *only*, each Class Member waives all rights provided by California Civil Code section 1542, which states:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

SCPMG shall have the option to extend the Release Period paying an additional proportionate amount based on the number of additional pay periods.

You will be barred from prosecuting any of the Class Member Released Claims against the Releasees.

G. Subclass Member Released Claims: If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will be deemed to have fully, finally, and forever released Releasees any and all claims that occurred during the Subclass Period based on the facts that are or could have been alleged in the Operative Complaint, including debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law related to paid sick leave under the Healthy Workplaces, Healthy Families Act or reimbursement for business expenses.

H. FLSA Subclass Member Released Claims: FLSA Subclass Members who timely cash or otherwise negotiate their settlement payment check will be deemed to have opted into the Action for purposes of the Fair Labor Standards Act ("FLSA") and, as to those Class Members, the Released Claims include any and all claims the Class Members may have under the FLSA arising under or related to the alleged claims during the FLSA

Subclass Period. Only those FLSA Subclass Members who timely cash or otherwise negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and thereby release and waive any of their claims under the FLSA arising under or relating to the alleged claims. This release excludes the release of claims not permitted by law. The following language will be printed on the reverse of FLSA Subclass Members' settlement payment checks, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the [Action], elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement."

I. PAGA Group Member Released Claims: If the Court grants final approval of the settlement agreement, PAGA Group Members will be deemed to have fully, finally, and forever released SCPMG and Releasees from any and all claims for recovery of civil penalties under the Private Attorneys General Act ("PAGA"), whether known or unknown, to recover wages, damages, penalties, attorneys' fees, litigation costs, restitution, or equitable relief, which Plaintiff and/or the PAGA Group Members had, or may claim to have, that were alleged or could have been alleged in Plaintiffs' letters to the LWDA, or the Operative Complaint from June 2, 2019 through [insert date of preliminary approval by the Court].

J. PAGA Subclass Member Released Claims: If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will be deemed to have fully, finally, and forever released Releasees any and all claims that occurred during the PAGA Subclass Period based on the facts that are or could have been alleged in the Operative Complaint, including debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law related to paid sick leave under the Healthy Workplaces, Healthy Families Act or reimbursement for business expenses.

K. Please Note: Individuals who fall within the definition of the Class or Subclass may choose to request exclusion or "opt-out" of these groups under such procedures specified herein. Any such persons who opt-out of the Class ("Opt-Outs") will not receive an Individual Class Payment, an Individual FLSA Subclass Payment, or an Individual Subclass Payment. However, you may not opt-out of the portion of the Settlement relating to the settlement of claims under the PAGA. Even if a Class Member opts-out, they will still receive an Individual PAGA Payment and an Individual PAGA Subclass Payment. You will be bound by the PAGA Member Release and the PAGA Subclass Member Release whether or not you cash the check for your portion of the PAGA allocation and the PAGA Subclass allocation before it becomes void.

V. WHAT ARE MY OPTIONS?

A. *You may accept your share of the \$9,970,000.00 settlement and be bound by the release of all claims described above.* Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the Administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued. After those one hundred eighty (180) days expire, the check will become void, and the funds will be placed in your name with the California State Unclaimed Property Fund;

OR

B. *You may exclude yourself from the settlement, in which case you will not receive a share of the Class Payment and you will not be bound by the Settlement as to the release of class claims.* If you choose to be excluded, by no later than _____ (45 calendar days after mailing of this Notice) (plus an additional 14 days if this Notice was re-mailed to you), you must send a written request for exclusion, by mail or email, to the Administrator, _____, located at _____. In order to be considered valid, your request for exclusion **must** include your name, your address, and a request for exclusion.

OR

C. *You may object to the settlement.* The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The Administrator will calculate your share of the settlement and will issue you a check.

B. Thirty-three percent (33%) of your share of the Individual Class Payment, Individual FLSA Subclass Payment, and Individual Subclass Payment will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining sixty-seven percent (67%) of these payments. You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. One-hundred percent (100%) of your share of the Individual PAGA Payment and the Individual PAGA Subclass Payment will be considered non-wages. You will be given an IRS tax form for this amount.

D. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the Administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

The Administrator's contact information is as follows:

Administrator: _____
Email Address: _____
Mailing Address: _____
Telephone Number: _____
Fax Number: _____
Settlement Website: _____

VII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on _____, 2024, at _____ a.m., in Department C-74 of the San Diego County Superior Court, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. You are not required to attend the hearing. Sullivan & Yaeckel Law Group, APC and Blumenthal, Nordrehaug, Bhowmik De Blouw, LLP (contact information below), counsel for Plaintiffs and the Class, will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. Remote appearances at the hearing may be allowed, but the procedures are subject to change. Current procedures are posted on the Court's website at: <https://www.sdcourt.ca.gov/virtualhearings>. You should check the Court website for up to date information before attempting to make a remote appearance.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

You have the option of objecting to the Settlement and telling the Court that you do not agree with the Settlement or some part of it. The Court will consider your views. To object, you may send a letter, which you must sign, saying that you object to the settlement of *Damon Coffey and Brandie Lukofnak v. Southern California Permanente Medical Group*, Case No. 37-2020-00029409-CU-OE-CTL. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number and/or your SCPMG employee ID number (if known), your address, the specific reasons you object to the terms of the Settlement, and your signature. Mail the objection to the Settlement Administrator address at [REDACTED] or fax to [REDACTED] on or before [REDACTED], 2024 (45 calendar days after mailing of this Notice, plus an additional 14 days if your class notice). A written objection is optional. You may also appear at the Final Approval Hearing, as described in Section VII, above, to have any objections heard by the Court.

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any papers filed in the Action, which are on file with the Clerk of the Court, case number 37-2020-00029409-CU-OE-CTL. The pleadings and all other records from this litigation may be examined by inspecting the Court file in the at the filing department of the San Diego County Superior Court, located at Hall of Justice, 330 West Broadway, San Diego, California 92101. You may also review the settlement agreement, along with other court records regarding this case, on the Court's website, <https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>, through the link to the "Register of Actions." You can also view this notice and the most important case documents on the Administrator's website for this Settlement at << [REDACTED] >>.

If you have any questions, you can call the Administrator at [REDACTED] or any of Class Counsel (see below for phone numbers.)

ATTORNEYS REPRESENTING PLAINTIFF AND THE CLASS

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ATTORNEYS REPRESENTING DEFENDANT SCPMG

SEYFARTH SHAW LLP
Christian J. Rowley
Kerry M. Friedrichs
Parnian Vafaenia

560 Mission Street, 31st Floor
San Francisco, California 94105

Telephone: (415) 397-2823
Facsimile: (415) 397-8549

**PLEASE DO NOT CALL THE COURT, SCPMG, OR SCPMG'S CORPORATE
OFFICE OR MANAGERS REGARDING THIS SETTLEMENT.**

IMPORTANT:

- You must inform the Administrator of any change of address to ensure receipt of your Settlement payment.
- Settlement checks will be null and void 180 days after the date of mailing if not deposited or cashed. In such event, the Administrator will pay all unclaimed funds to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member where the funds may be claimed at https://www.sco.ca.gov/upd_msg.html.
- If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT D



**Settlement Administration Estimate
Coffey v. Southern California Permanente Med.
December 29, 2023**

**Prepared by:
Andrew Meyer
Business Development Consultant
612-987-8835
ameyer@rustconsulting.com**

EXPERIENCE

With experience on approximately 3,500 labor and employment cases, we are the nation's largest labor and employment settlement administrator. We have managed employment settlements with class sizes ranging from dozens to multi-million class members. In fact, we've been trusted to administer many of the nation's largest settlements, including the nation's top wage-and-hour cases in recent years.

DATA SECURITY

Our internal data security practices meet or exceed today's exacting industry standards. Our enterprise-class data security measures are founded on standard business processes including a vigorous employee screening program, ongoing employee security training and a hardened production data center hosted at a Tier 1 network carrier, all designed for ensuring data integrity and security.

DEDICATED SPECIALISTS

Our labor and employment case team is strictly dedicated to managing settlement administration for cases involving matters such as wage-and-hour, FLSA, discrimination and ERISA. They're specialists, not generalists, with an industry reputation for responsiveness and expertise in relevant areas such as the applicable banking and tax regulations. We are confident that Rust is the best choice for the administration of your settlement.

Project Summary

Estimated Class Size	43,480
Project Cost	
Mailed Notice	\$ 46,228
Telephone Support	\$ 12,392
Website, Processing and Administration	\$ 870
Fund Distribution & Tax Reporting	\$ 49,893
Project Management	\$ 13,520
Other Out-of-pocket Expenses	\$ 1,250
Total Project Cost	\$ 124,152
Client Discount	\$ (4,500)
Total Project Cost w/ Discount	\$ 119,652
Total Not to Exceed (assumes scope within)	\$121,000.00

Key Assumptions

Notice Mailing w/Spanish translation

180 payment void date

Telephone Support included

One state tax ID

**Uncashed Pmts to Cy Pres or State Controller's Office
(tbd)**

**Not Included: Dynamic or Static Website, Email, claims
processing, reminder postcards**

Thank you for considering Rust Consulting, Inc. as your administrator -- we appreciate the opportunity to submit this estimate.



Settlement Administration Estimate
Coffey v. Southern California Permanente Med.
December 29, 2023

Prepared by:
Andrew Meyer
Business Development Consultant
612-987-8835
ameyer@rustconsulting.com

Key Assumptions Used to Prepare this Estimate

Class Size	43,480		Standard Hourly Rates*
Initial Mailed Notice:			SVP \$175-\$275
Mailed Notice	43,480	100.0%	Program Manager \$160-\$180
Forwarded Notices	1,087	2.5%	Project Manager \$100-\$140
Undeliverable Notices	6,522	15.0%	Technical Consultant \$110-\$180
Re-Mailed Notices after Trace	5,218	80.0%	Call Center Manager \$125
Telephone Support:			CSR \$ 43-\$ 50
Number of Telephone Contacts	4,348	10.0%	Processor \$ 43-\$ 50
Connect Minutes per Call - CSRs	5.0		Other \$ 43-\$125
Claimant Communications:			<i>*Subject to change</i>
Exclusions Received	217	0.5%	
Payments	43,263	100.0%	

Additional Administration Assumptions Used to Prepare this Estimate:

Database Development: Receive and Process Database assumes that the data provided is complete with respect to the data components needed to mail and calculate settlement payments. Data that includes multiple records for individuals or work history that needs to be accumulated and totaled by individual generally requires additional efforts to bring to a point where it is final settlement data. These additional efforts can take a significant amount of time and should be considered when setting key settlement dates, especially the mailed notice deadline. Data must be provided in a complete, consistent, standardized electronic format. Rust's standard format is ASCII fixed width complete with field layout. Other formats may be accepted at Rust's discretion. Resources used to enhance or further develop non-standardized data will be billed on a time and materials basis according to Rust's Current Standard Hourly Rates.

CASS/NCOA/LACS: CASS - Coding Accuracy Support System; NCOA - National Change of Address; LACS - Locatable Address Conversion System.

Notice Package: Print and Mail per unit price is estimated. Actual prices will be provided after form is finalized prior to mailing. Notice package includes notice and exclusion form.

Telephone Support IS included.

Processing & Administration: Receipt and Process Forms includes open, date stamp, label and data capture a 1-page form with up to five fields.

Project Management: Project Management fees are estimated and will be billed on actual time expended based on the rates found in the Current Standard Hourly Rates section above. The rates included in the estimate are a blended estimate of the rates listed above.

Out of Pocket Expenses: Includes post office box rental, overnight shipments, postage, labels, travel, long distance and other miscellaneous charges and expenses.

Pricing good for 90 days.



Settlement Administration Estimate
Coffey v. Southern California Permanente Med.
December 29, 2023

Prepared by:
Andrew Meyer
 Business Development Consultant
 612-987-8835
 ameyer@rustconsulting.com

Administrative Task	Estimated Quantity		Per Unit	Task Amount	Total
Database Development					
Receive and Process Database	6 Hours @		\$ 175.00	\$ 1,050	\$ 1,050
Additional Efforts to Finalize Settlement Data				<i>As Incurred</i>	
Initial Mailed Notice					
CASS / NCOA / LACS Processing				\$ 750	
Spanish translation				\$ 1,000	
Print and Mail Notice Package	43,480 Notices @		\$ 0.19	\$ 8,261	
Postage - 1 Ounce First Class	43,480 Notices @		\$ 0.53	\$ 23,088	\$ 33,099
Follow-up to Initial Notice					
Receive Undeliverable Notices and Update Database	6,522 Notices @		\$ 0.40	\$ 2,609	
Address Trace	6,522 Traces @		\$ 0.35	\$ 2,283	
Remail Notice Package	6,305 Notices @		\$ 0.50	\$ 3,152	
Remail Postage - 1 Ounce First Class	6,305 Notices @		\$ 0.64	\$ 4,035	\$ 12,079
Telephone Support					
Telephone Support	4,348 Calls @		2.25	\$ 9,783	
800# Charges	21,740 Minutes @		\$ 0.12	\$ 2,609	\$ 12,392
Processing and Administration					
Receipt, Process, and Validate Forms	217 Forms @		\$ 4.00	\$ 870	\$ 870
Additional Administrative Services Requested by Client					<i>As Incurred</i>
Website					
Fund Distribution					
Print and Mail Payments	43,263 Payments @		\$ 0.25	\$ 10,816	
Postage - 1 Ounce First Class	43,263 Payments @		\$ 0.53	\$ 22,972	
Check Processing	43,263 Payments @		\$ 0.22	\$ 9,518	
FDIC Charges				\$ 2,187	
Monthly Bank Account Fee (open - uncashed funds sent)	7 Months @		\$ 200	\$ 1,400	\$ 46,893
Tax Reporting					
Annual Fee -Qualified Settlement Fund	1 Year @		\$ 2,000	\$ 2,000	
Individual Income Tax Reporting (W2 & 1099)	1 Year @		\$ 1,000	\$ 1,000	\$ 3,000
Project Management					
Senior Vice President	2 Hours @		\$ 225	<i>waived</i>	
Project Management	54 Hours @		\$ 175	\$ 9,450	
Technical Consulting	22 Hours @		\$ 185	\$ 4,070	\$ 13,520
Other Charges and Out-of-pocket Costs					
					\$ 1,250
Total Settlement Administration Estimate					\$ 124,152



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Terms and Conditions

All claims administration services to be provided by Rust Consulting to Customer shall be subject to the following terms and conditions:

1. **Services.** Subject to the terms hereof, Rust Consulting agrees to provide the Customer with claims administration services (hereinafter, "Claims Services") as specified in the Proposal provided to Customer to which these Terms and Conditions are attached.
2. **Term.** The terms of this agreement will remain in effect until completion of the Claims Services, unless earlier terminated in accordance with Section 10 hereof.
3. **Charges for Services.** Charges to the Customer for Claims Services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Customer to Rust Consulting. Actual fees charged by Rust Consulting to Customer may be greater or less than such estimate, and Customer shall be responsible for the payment of all such charges and expenses in accordance with Section 4 hereof. Furthermore, Customer will be responsible for payment of all state and local sales and use taxes, if any, levied upon the charges payable by the Customer hereunder. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Customer to the extent that funds are received from the taxing authorities offset these charges. Rust Consulting may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.
4. **Payment of Charges.** Payment by Customer of Rust Consulting's monthly invoices shall be due upon receipt thereof. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Customer's liability to Rust Consulting for payment of Claims Services. Claims Services are not provided on a contingency fee basis.
5. **Confidentiality.** Rust Consulting agrees to implement and maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Customer data provided to Rust Consulting by Customer in connection herewith. Should Rust Consulting ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Customer, Rust Consulting will promptly notify the Customer, unless prohibited by applicable law. The Customer shall have the option to (1) provide legal representation at the Customer's expense to avoid such access or (2) promptly reimburse Rust Consulting for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If Rust Consulting is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, Rust Consulting will not be liable for breach of said obligation.
6. **Standard Banking Procedures.** In accordance with Rust Consulting's standard banking procedures, Rust Consulting will establish a demand deposit checking account (i.e. non-interest bearing) for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. When directed to invest funds in an interest bearing or investment accounts, Rust Consulting intends to invest all funds in U.S. government backed securities, unless directed by the parties in writing or the settlement agreement or distribution plan to invest in other types of securities; however, even in cases where funds are temporarily placed in interest bearing or investment accounts, funds will eventually be migrated to a demand deposit checking account prior to a fund distribution.
7. **Rights in Data.** Rust Consulting does not convey nor does the Customer obtain any right in the programs, system data, or materials utilized or provided by Rust Consulting in the ordinary course of business in the performance of this Agreement.
8. **Document Retention.** Unless directed otherwise in writing by Customer, Rust Consulting will destroy undeliverable notice mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Rust Consulting will retain all bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
9. **Limitation of Liability; Disclaimer of Warranty.** Rust Consulting warrants that our services will be performed with reasonable care in a diligent and competent matter. Our sole obligation will be to correct any non-conformance with this warranty. Rust Consulting shall not be liable, whether under theories of contract, negligence or other tort, statutory duty or other theories of liability in an amount exceeding the total charges to the Customer for the specific work affected by the error or omission. Rust Consulting will not be liable for any incidental, special, indirect, consequential or exemplary damages of any kind; or for any lost profits, lost opportunities, business interruption or for any liability incurred by the Customer or others to any third party. **THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE FOR PARTICULAR PURPOSE.**
10. **Termination.** The Claims Services to be provided under this Agreement may be terminated, at will by the Customer upon at least 30 calendar days' prior written notice to Rust Consulting. The Customer's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. Rust Consulting may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Customer is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Customer.
11. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of Rust Consulting or the Customer, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.
12. **Force Majeure.** To the extent performance by Rust Consulting of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond Rust Consulting's reasonable control, then such performance shall be excused and this Agreement, at Rust Consulting's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
13. **Nonwaiver of Rights.** No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.
14. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Court.
15. **Survival.** All accrued payment obligations hereunder, any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 7 (Rights in Data); Section 5 (Confidentiality), Section 9 (Limitation of Liability; Disclaimer of Warranty), and Section 14 (Jurisdiction).
16. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.