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Attorneys for Plaintiff MELODY DONBOLI

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MELODY DONBOLI, Individually and on
behalf of all similarly-situated employees of
Defendants in the State of California,

Plaintiff,

v.

PSYCHIATRIC ALTERNATIVES AND
WELLNESS CENTER PROFESSIONAL
CORPORATION and DOES 1 through 50,
inclusive,

Defendants

Case No.: 37-2020-00029809-CU-OE-CTL

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

IMAGED FILE

CLASS ACTION [CCP § 382]

Reservation No.: 2427894

**DECLARATION OF BRIAN R. SHORT IN
SUPPORT OF PLAINTIFF MELODY
DONBOLI'S UNOPPOSED MOTION FOR
AN ORDER 1) PROVISIONALLY
CERTIFYING SETTLEMENT CLASS; 2)
PRELIMINARILY APPROVING CLASS
SETTLEMENT; 3) DIRECTING
DISTRIBUTION OF NOTICE OF
SETTLEMENT TO THE CLASS; 4)
APPOINTING CLASS COUNSEL AND
CLASS REPRESENTATIVE; AND 5)
SETTING A HEARING FOR FINAL
APPROVAL OF CLASS SETTLEMENT**

Judge: Carolyn Caietti

Dept.: C-70

Hearing Date: March 4, 2022

Hearing Time: 10:30 a.m.

Date Complaint Filed: August 25, 2020

1 I, Brian R. Short, state and declare:

2 1. I am an attorney at law licensed to practice before all courts of the State of California. I
3 am the managing shareholder of ShortLegal, APC in San Diego, California. I am thoroughly familiar with
4 and have personal knowledge of all of the facts set forth herein. If called as a witness, I could and would
5 competently testify thereto.

6 2. My law firm, ShortLegal, APC and my Associate Dorota A. James are the attorneys of
7 record for Plaintiff Melody Donboli ("Plaintiff") in the case *Donboli v. Psychiatric Alternatives And*
8 *Wellness Center Professional Corporation*, San Diego County Superior Court, Case No.: 37-2020-
9 00029809-CU-OE-CTL, filed August 25, 2021. I submit this declaration in support of Plaintiff Melody
10 Donboli's Unopposed Motion for Preliminary Approval of Class Action Settlement which seeks
11 primarily: (1) the granting of preliminary approval of the proposed Settlement; (2) the approval of the
12 distribution of the Class Notice to the Class; (3) the appointment of Brian Short and Dorota A. James of
13 ShortLegal, APC as Class Counsel, the appointment of Plaintiff Melody Donboli as a Class
14 Representative, and ILYM Group, Inc. as Claims Administrator; (4) and the setting of a hearing for final
15 approval and class counsel's requested fees and costs and Class Representative's' service award request.
16 The Stipulated Settlement Agreement and Release of Claims ("Stipulation" or "Agreement") and the
17 Proposed Notice to the class are attached hereto as Exhibits 1 and 2, respectively.

18 CLASS COUNSEL'S CLASS ACTION EXPERIENCE

19 3. I have been a member of the State Bar of California since 2005. I am also admitted to
20 practice in various Districts of United States District Court. I have been practicing almost exclusively in
21 complex class action matters in state and federal courts since I began my legal practice in 2005. Since
22 February 2009, I have spent almost my entire practice representing employees in class and representative
23 action wage and hour litigation. My primary practice in complex class action litigation spans more than
24 16 years.

25 4. During just the last 12 years, I have served as plaintiff's counsel of record in the following
26 wage/hour employment class action and PAGA action cases, where I was responsible for the prosecution
27 of said cases: Weaver v. Hallmark Marketing Corporation, United States District Court for the Central
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1 District of California (3,846 class members); Mahoney v. AT&T Corp, Superior Court for the County of
2 Los Angeles; Thomson v. LawInfo.com, Superior Court for the County of San Diego; Vest v. Scher Tire,
3 Inc., Superior Court for the County of Riverside; Duarte v. Rainbow Disposal Co., Inc., Superior Court
4 for the County of Orange; Julio v L&M Tire Co., Inc., Superior Court for the County of San Diego;
5 Lucarini v. Dresser, Inc., Superior Court for the County of Los Angeles; Stevenson v. Falcon Critical Care
6 Transport, Superior Court for the County of Contra Costa; Iskandaryan v. Casual Male Retail Group, Inc.,
7 Superior Court for the County of Los Angeles; Williams v. OneLegacy, Superior Court for the County of
8 Los Angeles; Corral v. Lifecare Solutions, Inc., et al., Superior Court for the County of Los Angeles;
9 Huerta v. Venture Petroleum Company, Inc., Superior Court for the County of San Diego; Frugard v.
10 Unified Protective Services, et al., Superior Court for the County of Los Angeles; Turnage v. Park
11 Management Corp. dba. Six Flags Discovery Kingdom, Superior Court for the County of Solano; Clancy,
12 et al. v. Scripps Health, Superior Court for the County of San Diego; Solaberrieta v. Baker Hughes Oilfield
13 Operations, Inc., et al., Superior Court for the County of Los Angeles; Gutierrez v. L & M Tire Company,
14 Inc., Superior Court for the County of San Diego; Stafford v. Dollar Tree Stores, Inc., Eastern District of
15 California; Stafford v. Dollar Tree Stores, Inc., Superior Court for the County of Solano; Turnage v. Old
16 Dominion Freightlines, Inc., Central District of California; Green v. Lawrence Service Company, United
17 States District Court for the Central District of California; Radford v. ACD Direct, Superior Court for the
18 County of San Diego; De La Rosa v. Quten Research Institute, LLC, Superior Court for the County of
19 San Diego; Frayre v. UPS, Superior Court for the County of San Diego; Leonard et al. v. ABTTC, Inc.,
20 Superior Court for the County of Riverside; Loveless v. ASM Affiliates, Superior Court for the County
21 of San Diego; Alfaro v. KSC Studios dba OneKreate, LLC, Superior Court for the County of San Diego;
22 Madriz v. North County Ford, Inc., Superior Court for the County of San Diego; Troxel v. LA Leasing,
23 Inc., Superior Court for the County of San Diego, and Garcia v. WSI, et al, Superior Court for the County
24 of San Diego; and Enriquez v. Colt Services, Superior Court for the County of San Diego; Virissimo v.
25 L'Oreal USA Products, Inc. et al, Superior Court for the County of San Diego; Horton v. Socket Payment
26 Services, United States District Court for the Southern District of California; Alfaro v. Ten Stories, Inc.,
27 Superior Court for the County of San Diego; Lemar v. Earthlite, LLC, et al., Superior Court for the County
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1 of San Diego; and Rodriguez v. Chimney Sweeps, Superior Court for the County of San Diego; Burgueno
2 v. Tayman Industries, Inc., Superior Court for the County of San Diego; and Garcia v. J.C. Penney
3 Corporation, Inc., Superior Court for the County of San Diego; Rivera v. Octavian FM, LLC, Superior
4 Court for the County of San Diego; Virissimo v. L'Oreal USA Products, Inc. et al., Superior Court for the
5 County of San Diego; Ruess v. Fun Bike Center, Superior Court for the County of San Diego; Hitchko et
6 al v. NPTI of Southern California, et al., Superior Court for the County of San Diego, Dortch v. Southern
7 California Addiction Center, Superior Court for County of Orange; Fox v. Capital Growth Properties, Inc.;
8 Superior Court for the County of San Diego; Davis v. SoCal Interiors, Inc., Superior Court for the County
9 of San Diego, Hubbard v. L'Oreal USA Inc., Superior Court for the County of San Francisco; Fox v.
10 Capital Growth Properties, Inc.; Superior Court for the County of San Diego; Burns v. Driveline Retail
11 Merchandising Inc., Superior Court for the County of Sacramento; Guiher v. Punch Bowl of San Diego,
12 et al., Superior Court for the County of Sacramento; Flores v. New Age Distribution, Inc., Superior Court
13 for the County of Orange; Lara v. The Pep Boys Manny Moe & Jack of California, Superior Court for the
14 County of San Diego; Paul v. Hygeia, Superior Court for the County of San Diego; Brewer v. Pyramid
15 Enterprises, Inc., Superior Court for the County of San Diego; Hoffman v. Crest Beverage, LLC, Superior
16 Court for the County of San Diego.

17 5. My Associate Dorota A. James has a long history of experience litigating complex wage
18 and hour class actions. Ms. James is a fifth-year attorney who has extensive experience dealing with
19 complex wage and hour litigation. She received her Paralegal Certificate from the USD Paralegal
20 Program in 2007. Prior to that, she was trained at the Law School at the University of Wroclaw, Poland
21 where she graduated in 1994. Thereafter, Ms. James moved to Germany where she first received her
22 LL.M. degree and then earned her title of Doctor of the Science of Law (S.J.D) at the University of
23 Saarland (Germany). While completing her LL.M. degree, Ms. James worked as a law assistant in a
24 German attorney's office with the focus on a civil and business litigation, including labor disputes. Ms.
25 James completed the L.L.M. Program in Comparative Law at the University of San Diego and became a
26 licensed member of the California State Bar in June 2016. Ms. James has significant experience and
27 knowledge of complex class actions against employers in wage and hour disputes. Before she joined my
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1 law firm, Ms. James worked with myself as a senior litigation paralegal at another San Diego law firm
2 which specialized in representing plaintiffs in wage and hour employment litigation. During her time
3 spent at my current firm and the time she spent at our previous firm she provided all aspects of litigation
4 support pertaining to complex class action litigation from pre-filing research, discovery, pre-mediation
5 analysis through to post-settlement claims. She is actively assisting in the litigation of each of the cases
6 listed in paragraph 4, above. During her career as employment law paralegal she assisted with and
7 worked on more than 50 employment class action cases.

8 6. During just the last 3 years, my Associate Dorota A. James has served as plaintiffs' counsel
9 of record in the following wage/hour employment class action and PAGA action cases, where I was
10 responsible for the prosecution of said cases: Garcia v. J.C. Penney Corporation, Inc., Superior Court for
11 the County of San Diego; Fox v. Capital Growth Properties, Inc.; Superior Court for the County of San
12 Diego; Burns v. Driveline Retail Merchandising Inc., Superior Court of the County of Sacramento; Guhier
13 v. Punch Bowl of San Diego, et al., Superior Court of the County of Sacramento; Ruess v. Fun Bike
14 Center, San Diego Superior Court of San Diego; Hitchko et al v. NPTI of Southern California, et al.,
15 Superior Court for the County of San Diego; Dortch v. Southern California Addiction Center, Superior
16 Court for County of Orange; Davis v. SoCal Interiors, Inc., Superior Court for the County of San Diego;
17 Flores v. New Age Distribution, Inc., Superior Court for County of Orange; Rivera v. Octavian FM, LLC,
18 Superior Court for the County of San Diego; Lara v. The Pep Boys Manny Moe & Jack of California,
19 Superior Court for the County of San Diego; Paul v. Hygeia, Superior Court for the County of San Diego;
20 Brewer v. Pyramid Enterprises, Inc., Superior Court for the County of San Diego; Hoffman v. Crest
21 Beverage, LLC, Superior Court for the County of San Diego.

22 7. I and my Associate Dorota A. James are currently serving as plaintiff's counsel of record
23 in the following wage/hour and employment class action and/or PAGA representative action cases:
24 Enriquez v. FedEx Office and Print Services, Inc., Superior Court for the County of San Diego; Taalib-
25 Din v. FedEx Office and Print Services, Inc., Superior Court for the County of San Diego; Guzman-
26 Lopez v. The American Bottling Company, et al., United State District Court, Central District; Garcia v.
27 Respironics California, LLC, Superior Court for the County of San Diego; Smith v. Tradition One,
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1 Superior Court for the County of San Diego; Smith v. McAlister Institute, Inc. for Treatment and
2 Education, Inc., Superior Court for the County of San Diego; Martin v. Herc Rentals, Inc.; Superior Court
3 for the County of San Diego, Superior Court for the County of San Diego; Salcedo v. Jackson and Blanc;
4 Superior Court for the County of San Diego; Nichols, Jr. v. Vuori, Inc., Superior Court for the County of
5 San Diego; Norton v. Care Medical Transportation, Inc; Superior Court of for the County of San Diego;
6 Patel v. Apex Recovery, Superior Court for the County of San Diego; Fox v. Prime Asset Management,
7 Inc., Superior Court of for the County of San Diego.

8 8. Ms. James and I have extensive experience litigating class actions, other complex litigation
9 and wage and hour claims, such as those asserted in this action. Our knowledge of the applicable wage
10 and hour laws is evidenced by our representation of employees in numerous disputes in state and federal
11 courts in California.

12 9. Ms. James and I are the attorneys of record for Plaintiff Melody Donboli, who is a current
13 employee of Defendant Psychiatric Alternatives And Wellness Center Professional Corporation
14 (“Defendant” or “PAWC”). Plaintiff has been employed Defendant as a Marriage and Family Therapist
15 since 2014.

16 10. In or around June 2020, Plaintiff contacted our law firm with concerns arising out of her
17 employment with Defendant. We immediately sent out a request for a copy of Plaintiff’s pay records, time
18 records, and personnel file. Accordingly, based on the information known at that time, on July 20, 2020
19 Plaintiff submitted the requisite notice letter to the Labor Workforce and Development Agency.
20 Subsequently, on August 25, 2020 my firm filed a putative class action lawsuit on behalf of the Plaintiff
21 and similarly-situated employees of Defendant in the California Superior Court, County of San Diego,
22 Case No.: is 37-2020-00029809-CU-OE-CTL. On October 12, 2020, Plaintiff filed First Amended
23 Complaint seeking to recover applicable PAGA penalties.

24 11. In response to Plaintiff’s complaint, Defendant moved the court to transfer the venue to
25 the San Francisco Superior Court. On January 22, 2021, the Court denied Defendant’s Motion.

26 12. Prior to filing the complaint, my firm conducted a lengthy investigation into the merits of
27 Plaintiff’s claims, Defendant’s potential affirmative defenses, and the novel legal issues pertaining to the
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1 misclassification of Marriage and Family Therapists and Licensed Clinical Social Workers as independent
2 contractors. We identified the primary claim that Plaintiff and other similarly-situated employees were
3 not properly classified as independent contractors under the newly enacted AB.5 legislation that codified
4 the landmark, unanimous decision of the California Supreme Court in *Dynamex*. Plaintiff alleged that as
5 result of the misclassification, Defendant failed to pay Plaintiff and other similarly-situated employees
6 minimum, regular, and overtime wages for all hours worked. Plaintiff further alleged that Defendant failed
7 to reimburse Plaintiff and other similarly-situated employees for employment related expenses, including
8 but not limited to rent payments for office space, office-internet access, office equipment, and personal
9 cell phone expenses. Plaintiff also alleged that Defendant failed to (1) provide and authorize complaint
10 meal and rest periods; (2) pay timely wages; (3) furnish accurate itemized wage statements, and (4)
11 maintain employment records. Additionally, Plaintiff sought to recover damages, penalties, interest,
12 disgorgement of profits, injunctive relief and attorney's fees and costs.

13 13. Before commencing the civil action against Defendant, my firm conducted extensive
14 interviews with the named Plaintiff regarding the claims in the action and thoroughly analyzed
15 employment related documents related to Defendant's policies and practices that were maintained by
16 Plaintiff. Plaintiff also conducted comprehensive legal research regarding the application of the 2019
17 Assembly Bill 5 (AB 5) to the instant matter and whether Defendant can carry its burden of meeting all
18 prongs under the *Dynamex ABC* Test and, consequently, prove Plaintiff and other putative Class Members
19 are properly classified as independent contractors. My firm further performed an extensive investigation
20 of the business operations and practices of companies that provide administrative, billing, and
21 credentialing services to individual mental health providers in order to refute Defendant's key defense that
22 the putative Class Members perform work outside the "usual course of the hiring entity's business" (prong
23 B of the *ABC* Test) as PAWC is not in a business of providing mental health services to patients but offers
24 administrative services to independent therapists. Finally, to support Plaintiff's position that PAWC is
25 indeed engaged in providing mental services to patients, Plaintiff also conducted a wide-ranging research
26 regarding the requirements set by the California statutes and administrative regulations for professional
27 corporations, such as PAWC, to render professional services to the public.

1 14. As part of the formal investigation, on January 7, 2021 my firm drafted and served upon
2 Defendant comprehensive formal written discovery, set one including Special Interrogatories, Form
3 Interrogatories-General, Form Interrogatories-Employment, and Requests for Production of Documents
4 in order to evaluate the merits of the underlying claims and to support Plaintiff's motion for class
5 certification.

6 15. Soon thereafter, Defendant approached Plaintiff's counsel with a proposal of early
7 mediation in order to proceed in an efficient manner and reduce the expenditure of unnecessary litigation
8 costs. Plaintiff agreed and the parties began to engage in discussions regarding selection of a potential
9 mediator and the exchange of informal documents to evaluate the potential damages on behalf of the Class
10 in lieu of formal discovery responses that were served on Defendant.

11 16. In order to provide a complete analysis of the claims, defenses and potential damages for
12 mediation, Plaintiff's counsel informally requested that Defendant produce its relevant policies,
13 procedures, and practices and data demonstrating the total number of hours and workweeks worked by
14 the putative Class Members, their hourly-rates, and the total compensation their received during the Class
15 Period. In response to Plaintiff's request, Defendant produced: the number of former and current
16 employees, the number of therapy sessions conducted by each individual putative Class Member during
17 the Class Period, the hourly rate PAWC paid the individual putative Class Members for therapy sessions,
18 Plaintiff's work schedules and Independent Contract Agreement, email correspondence regarding
19 PAWC's policies and practices related to cancellation of appointments with patients, medical notes and
20 charting requirements. In addition, the parties agreed to conduct abbreviated depositions of Plaintiff and
21 PAWC's PMKs in order to facilitate meaningful settlement negotiations. On April 21, 2021, Plaintiff took
22 depositions of PAWC's Person Most Knowledgeable with respect to (1) Defendant's Payroll and Billing
23 Practices, Policies and Procedures; (2) Defendant's Policies, Practices, and Procedures Regarding
24 Services Provided to PAWC's Patients; (3) Defendant's Business Operations; and (4) Classification of
25 Marriage and Family Therapists as Independent Contractors.

26 17. Prior to mediation, the parties engaged in several pre-mediation discussions in order to
27 understand and evaluate the merits and potential defenses which would be asserted at the mediation. These
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1 additional pre-mediation discussions are not often utilized in class action cases, but I believe that it
2 significantly narrowed the scope and arguments which were presented at mediation. Moreover, it
3 permitted the parties to better analyze the claims asserted, defenses raised and was a significant factor in
4 the parties' ability to reach eventual resolution after mediation.

5 18. My firm meticulously scrutinized and analyzed the informal discovery documents and
6 records for accuracy and compliance with the California Labor Code. We also performed comprehensive
7 legal research based on each theory of recovery and the possible legal defenses thereto. In addition, our
8 firm performed a comprehensive class-wide damage study under each theory of recovery to evaluate the
9 extent of the class wage loss after receiving employee payroll records. The damages included calculations
10 of the estimated value for wage and hour violations, as well as the penalties and wage premiums for failure
11 to provide meal and rest periods and the amount of waiting time penalties and other penalties that would
12 result from the above violations.

13 19. The total calculated potential damages if Plaintiff was successful on *all claims at trial* are
14 as follows:

15 i. **Failure to Pay all Waiting Time Penalties: \$112,167**

16 Plaintiff contends that Defendant failed timely to pay all wages upon separation,
17 thereby owing their employees waiting time penalties. This was calculated by
18 determining the average daily hours worked (6 hours), the average hourly rate of
19 pay (\$56.65) and multiplying this amount by 30 days to determine the waiting time
20 penalty owed to one employee. This was then multiplied by the total number of
21 former employees within the Class Period (11).

22 ii. **Unpaid Rest Period Premium Wages: \$1,775,663.65**

23 Plaintiff alleged that as a result of Defendant's misclassification of the putative
24 Class Members, Defendant never provided Plaintiff and other similarly-situated
25 employees complaint and off-duty rest breaks and never paid them rest break
26 premiums as required under the applicable provisions of the Labor Code. Plaintiff
27 calculated the amount of wages owed by Defendant for its failure to provide and
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1 authorize rest breaks by first determining the total number of shifts worked greater
2 than 3.5 hours in duration during the Class Period (31,344.46). This number was
3 then multiplied by the average rate of pay (\$56.65) to reflect the missed premium
4 wages for rest periods for all eligible shifts.

5 iii. **Unpaid Meal Period Premium Wages: \$1,456,222.24**

6 Plaintiff alleged that as a result of Defendant's misclassification of the putative
7 Class Members as independent contractors, they were not authorized and permitted
8 to take complaint 30-minute, off-duty, uninterrupted meal periods and,
9 consequently, were entitled to meal period premium wages which Defendant failed
10 to pay as required under the California Labor Code. Plaintiff calculated the amount
11 of damages resulting from Defendant's failure to pay the meal break premiums by
12 first determining the total number of shifts longer than 5 hours (25,705.6) within
13 the Class Period and then multiplying this number by the average rate of pay to
14 reflect the total amount owed for meal premium wages.

15 iv. **Failure to Reimburse the Putative Class Members for Employment-Related**
16 **Expenses: \$884,136**

17 Plaintiff further alleged that she and other putative Class Members incurred cell-
18 phone, internet, office supply, and rent expenses in discharge of their duties but
19 Defendant failed to indemnify them for these employment-related expenses.
20 Plaintiff calculated the total amount of damages resulting from the Defendant's
21 failure to reimburse its employees for the costs their incurred on behalf of
22 Defendant but multiplying the average monthly costs per employee (\$935) by the
23 total number of the months within the Class (47.28) and then the average number
24 of employees working at any given time during the Class Period (20).

25 v. **Failure to Pay Overtime wages: \$574,449.60**

26 Plaintiff alleged that Defendant failed to compensate the putative Class Members
27 for all the overtime hours worked. The damages resulting from Defendant's failure
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to pay for the overtime, were calculated by multiplying the average amount of unpaid OT wages per employee per pay period by the total number of pay periods within the Class Period (6,146). In addition, a statutory interest at a rate of 10% was added.

vi. **Failure to Provide Wage Statements: \$240,000**

Plaintiff contended that the class was owed penalties and damages due to Defendant's failure to include total hours worked, proper regular and overtime hourly pay rates, total number of regular and overtime hours worked during the pay period on the putative Class Members' wage statements. The relevant Labor Code provisions allow for recovery of the greater of all actual damages recovered, or a penalty of \$50-100 per pay period (up to a maximum of \$4,000 per affected employee). The total amount of damages resulting from Defendant's failure to provide accurate wage statements was calculated by multiplying the number of the putative class members by the maximum amount of the penalties allowed under the Labor Code.

20. On May 7, 2021, the Parties engaged in a full-day mediation session with Mr. Steve Vartabedian, Esq.¹, who is a well-respected, neutral third-party mediator, well-versed and experienced in wage and hour class actions. During the mediation, Defendant was represented by Leiann Laiks of Fusion Legal and Plaintiff Melody Donboli by Brian R. Short and Dorota A. James of ShortLegal, APC respectively. During the mediation session, the Parties engage in a good-faith negotiations, exchange additional information regarding the realistic damages exposure to Defendant, discussed the strength and weaknesses of Plaintiff's claims, the risks, costs, and delays of further litigation, the competing valuations of Plaintiff's potential class-wide damages, and the difficulty in maintaining class certification of each claims. Mr. Vartabedian's role in mediating the case was very helpful with respect to managing the parties' expectations and provided a useful and neutral analysis of the issues and risks of all parties. However, after a full day of negotiations, information exchanges conducted through the mediator and directly

¹ More information about Steve Vartabedian and his background may be found at <https://www.fennemorelaw.com/people/attorneys/t-z/vartabedian-steven-m>

1 through the parties' representatives, the parties made significant progress, but were ultimately unable to
2 reach a formal settlement on that date. However, the parties did set a framework and foundation that
3 permitted the parties to continue informal settlement discussions after mediation.

4 21. The parties agreed to continue their attempts to informally resolve this matter. Following
5 numerous phone conferences, the parties were able to reach a settlement to resolve Plaintiff's class and
6 PAGA claims. Negotiations were rigorous and conducted at arms' length. Based on Plaintiff's Counsel's
7 analysis of the documents and data and their evaluation of this case in general, Plaintiff's Counsel is of
8 the opinion that the substantial class and PAGA settlement is fair, reasonable, and adequate in light of all
9 known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings
10 regarding liability, and various potential appellate issues.

11 22. Defendant vehemently denied all of the Class Action allegations. Defendant maintained
12 several arguments to Plaintiff's theories of liability. With respect to Plaintiff's key claim Defendant
13 misclassified its Marriage and Family Therapists and Licensed Clinical Social Workers, Defendant argued
14 that the company meet all the three *ABC* prongs set by the *Dynamex* case and codified in Cal.Labor Code
15 Section 2750.3. Defendant claimed that its therapists are free from PAWC's control and direction as they
16 are able to select their own patients, have a complete control over their work schedule, do not have to
17 adhere to any PAWC's policies and practices and exercise a complete professional discretion with respect
18 to their patients' treatment. Defendant also argued that PAWC provides credentialing, administrative, and
19 billing service to therapists and is not in a business of offering mental health services to patients.
20 Consequently, Defendant claimed that the company was not required to pay the putative Class Members
21 for all hours worked, including the overtime work, and maintain any meal and rest break policies and
22 procedures applicable to the putative Class Members as they were properly classified as independent
23 contractors. Additionally, Defendant contended Plaintiff and the putative Class Members established their
24 own schedule, and scheduled their patients in accordance with their preference and availability and had
25 plenty of opportunities to take the required rest and meal breaks. Defendant consequently discredited
26 Plaintiff's meal and rest break claims.

23. With respect to Plaintiff's claim regarding Defendant's failure to pay overtime, Defendant provided examples of work schedules that demonstrated that the violation effected a very small percentage of employees who worked more than 8 hours a day. Therefore, Defendant did not give a lot of monetary value to this claim.

24. With respect to Labor Code Section 2802 violation, Defendant alleged that the putative Class Members operated own individual practices/offices where they provided therapy sessions to their private clients along with the PAGA patients. Therefore, Defendant claimed Plaintiff's estimated damages were inaccurate as they were based on the assumption that all the costs the putative Class Members incurred in connection with the operations of their practices were related to providing mental-health services to PAWC's patients only. As a result, Defendant contended that these costs were not subject to reimbursement even if Plaintiff were successful in her claims.

25. With respect to the imposition of waiting time penalties, Defendant contended that the underpayment of wages affected a very small percentage of the therapists who worked more than the eight hours a day, and therefore the waiting time penalties effected only a small fraction of former employees who worked for Defendant. Therefore, Defendant did not give a lot of monetary value to this claim.

26. In addition to the defenses on the merits, Plaintiff considered the Defendant's position that PAGA penalties are discretionary in nature and that even if Plaintiff were successful at trial, the Court has discretion to significantly decrease the amount of damages awarded in this action. In support of its argument, Defendant pointed to some recent California Superior Court's Orders and the California Court of Appeal decisions confirming that it was within the Court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the California Labor Code occurred. Defendant also argued that the heightened penalties for "subsequent violations" under California's Private Attorney General Act (PAGA) cannot be imposed since neither the Labor Commissioner nor a court notified PAWC of the alleged Labor Code violation(s) at issue.

27. Accordingly, Plaintiff considered the risks of receiving no recovery whatsoever, and/or very lengthy litigation and appeals process, balanced by the exhaustive analysis and investigation. Plaintiff has also taken into account the uncertain outcome and the risk of loss in any litigation, especially in

1 complex actions such as this, involving a novel issue of misclassification of marriage and family therapists
2 under a newly-codified law. These factors create additional complexity and therefor trial could potentially
3 be complicated and arduous, and require the input of multiple experts who are well-versed in industry-
4 specific issues. Even though Plaintiff believes that her case possesses substantial merit, the litigation
5 cannot legitimately be characterized as being without risk or that Plaintiff would inevitably prevail at trial
6 or at the appeals process. Defendant is represented by able counsel who have mounted a vigorous and
7 knowledgeable defense on its behalf.

8 28. The parties would have to undergo further extensive discovery including discovery related
9 to class certification and the merits if the case did not settle. Even if class certification was achieved, there
10 could be potential motions for decertification of the class. The parties would file cross-motions for
11 summary judgment. If Defendant's financial condition could withstand litigation, the putative class action
12 would potentially continue several additional years. There is also a risk that well-funded Defendants will
13 "out-spend" its adversary, both from a time and money value.

14 29. It was after months of preparation for mediation, an extended full-day of negotiations and
15 months-long post-mediation settlement discussions, reviews of calculations, comparison of data and
16 exchange of information that Plaintiff agreed to accept \$1,050,000 in settlement of all of the claims
17 presented. In addition, Defendant agreed to conduct a thorough review of its internal policies to ensure
18 compliance with California's laws going forward. This benefit, insisted upon by the Representative
19 Plaintiff, will result in significant immediate and tangible proof to the Class Members that their interests
20 have been protected. Based on all of the circumstances, including the uncertain outcome and the risk of
21 the litigation, I believe that this is a fair and reasonable settlement value considering the highly disputed
22 nature of Plaintiff's claims. Our determination of a fair value of the settlement was based on number of
23 factors, including our investigation of the applicable law as it applied to the facts, the suitability of the
24 case for class treatment, Plaintiff's claims and the associated damages, as well as Defendant's potential
25 defenses.

26 30. All of the Net Fund Value Amount, approximately \$652,500 before any residuals are added
27 in (the amount remaining from the Gross Fund Value Amount after deducting the requested reasonable
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1 attorney's fees and litigation costs, reasonable Claims Administration Costs, reasonable Service Award,
2 and PAGA penalties) will be allocated among the participating Class Members. This equates to an average
3 payment of \$10,875 per class member.

4 31. In order to participate in the settlement, putative Class Members are not required to
5 affirmatively perform any duties. They are not required to submit a claim form and a check will
6 automatically be sent to their best available address in a timely manner after the address-verification
7 procedures are performed. The participating Class Members shall be paid their Individual Settlement
8 Amounts from the Net Settlement calculated based on the wages earned by the Participating Class Member
9 while he/she was employed by Defendant in California during the Class Period. In other words, the
10 settlement of each Class Member's claims for wage and hour violations will accurately reflect the amount
11 of time and effort each Class Member put into his or her job.

12 32. Defendant has agreed to pay the Labor and Workforce Development Agency (LWDA) a
13 penalty payment of \$25,000 from the settlement proceeds. This equates \$18,750 (75% of the total PAGA
14 penalties) being made payable to the LWDA, and the remaining 25% distributed amount the participating
15 Class Members. We believe this is a fair and reasonable apportionment in light of the fact that the
16 assessment of civil penalties at trial has not been well-tested the actual probability of recovery remains
17 relatively speculative. This amount provides a reasonable percentage in comparison to the fund available
18 to the Class and allows for more wages to be distributed to the affected employees.

19 33. Plaintiff's firm will request attorney's fees of no more than one-third of the gross
20 settlement amount (\$350,000), and for reimbursement of the law firms' actual litigation costs up to
21 \$10,000. The amount requested is reasonable if evaluated pursuant to the percentage of common fund or
22 lodestar methodology and further details of these analysis will be provided to the court in conjunction
23 with the filing of Plaintiff's fee application.

24 34. I believe that the attorney's fees requested are fair and reasonable because of the
25 exceptional results achieved for the class members in the face of the formidable defense mounted by
26 Defendant's experienced attorney, the difficulties presented in these highly-technical and novel issues
27 resulting out Plaintiff's wage and hour claims brought; the wide-ranging experience necessary to negotiate
28

1 a settlement which contemplates claims where much of the damages are dependent on demonstrating
2 willfulness and are subject to discretionary reduction. The attorneys and paralegal staff at my firm record
3 time worked and billed contemporaneously in increments of tenths of an hour. Upon the submission of
4 my firm's fee request, which will be submitted to be heard in conjunction with the Motion for Final
5 Approval, the request will be supported by a detailed explanation of the qualifications of each timekeeper
6 along with an explanation of the tasks performed by my office during the litigation. The costs requests
7 will also be supported at the time of final approval with an explanation of the amount and nature of the
8 costs incurred.

9 35. Plaintiff Melody Donboli spent a great deal of time and made personal sacrifices to act as
10 Class Representative in furtherance of the litigation. Plaintiff contributed extensively during the case,
11 including reviewing complaint, correspondence to LWDA, preparing and attending deposition, frequently
12 communicating with counsel, providing valuable factual resources, searching for and providing numerous
13 documents, and rearranging personal obligations in order to make herself available to answer questions
14 from the mediator or my office during the full-day mediation and settlement negotiations. At all times,
15 she acted to protect the best interests of the Class to achieve the proposed settlement. Plaintiff was always
16 available to respond to her Counsel's inquiries and made significant time available as the date of mediation
17 approached. She also assisted with evaluating the proposed settlement. This work was undertaken in order
18 to achieve the proposed settlement. A declaration detailing the extent of the named Plaintiff's work and
19 hours worked for the benefit of the class will be submitted in conjunction with the Motion for Final
20 Approval.

21 36. Plaintiff undertook the action as a current employee and therefore accepted a great deal of
22 risk by challenging the business model of PAWC that is based on classifying its workers as independent
23 contractors v. employees to increase its profits. As a current employee, she understood that bringing this
24 action may result in her termination or preclude or negatively affect her ability to find an employment
25 with another company in the future due to the public nature of this lawsuit against her employer. This is
26 this age of social media and Google searching where a future potential employer can readily search
27 Plaintiff's name and may very easily forgo hiring Plaintiff upon learning about this lawsuit against her
28

1 employer for violation of the wage and hour California Labor Code. For this precise reason, employees
2 are very often intimidated and discouraged from bringing actions against their current and former
3 employers and are even more deterred from acting as a Class Representative. Indeed, on several previous
4 cases in my office, a simple Google search of class representative names along with the term “class action”
5 has yielded search results that place their lawsuit at the top page of results and were therefore readily
6 available to any potential future employer. Plaintiff nevertheless had the courage to bring this action and
7 placed the class interests before her own to benefit all current and former employees of Defendant.
8 Plaintiff’s participation as the Class Representative was an essential element that allowed my firm to settle
9 the class claims. I believe other Class Members would not have taken any action individually, and they
10 would not have received the compensation afforded by this Settlement but for Plaintiff’s contribution.

11 37. In addition, Plaintiff is agreeing to a much broader general release and §1542 waiver which
12 leaves her without recourse for known and unknown potential claims she may have against Defendant
13 now or in the future. This concession is significant and real. Considering these risks, Plaintiff’s selfless
14 desire to see that all similarly situated employees are included in this recovery is to be commended and
15 should be recognized. I believe that the requested service award in the total amount of \$7,500 for Plaintiff
16 is fair and reasonable.

17 38. Granting approval of the class action settlement would create a settlement fund that would
18 streamline this process and Class Members who participate in the settlement will receive payments for
19 their claims and other damages and penalties in the immediate future.

20 39. My Associate Dorota A. James and I are qualified to evaluate the class claims and viability
21 of defenses in this unpaid wage class action based on our combined experience in other wage and hour
22 cases. The recovery for each class member is reasonable, fair and adequate, and a settlement at this time
23 is in the best interests of the class. The settlement gives each class member a fair amount of payment for
24 waiting time penalties, overtime compensation, rest and meal periods, and penalties.

25 40. I believe that the settlement of \$1,050,000 is an excellent result. It is fair, reasonable, and
26 in the parties' best interests, especially after balancing the proposed settlement terms against the
27 probable outcome of liability, the untested issues, the range of recovery at trial, and the likelihood of
28

1 collection of any recovery at trial, the financial strain of the litigation on Defendant, the prospect of an
2 adverse ruling on summary judgement and/or class certification, the difficulties of complex litigation,
3 the lengthy process of establishing specific damages; individual issues, and possible delays and appeals.
4 This provides a fair recovery to the class, the amount of which easily falls within the range of
5 reasonableness. As such, the evidence utilized to assess the magnitude of the class's potential damages,
6 as well as the sums proposed to be paid are reasonable and meet the criteria set forth in *Kullar v. Foot*
7 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct.

10 Executed September 24, 2021 at San Diego, California.

11
12 

13
14 _____
15 Brian R. Short
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Exhibit 1

1 **STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 **ARTICLE I**

3 **INTRODUCTION**

4 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
5 the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of
6 this action shall be effectuated upon and subject to the following terms and conditions. Capitalized
7 terms used herein shall have the meanings set forth in the "Definitions" section or as defined
8 elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter "Agreement").

9 Plaintiff Melody Donboli ("Representative Plaintiff") and the putative Class Members, make
10 this agreement with Defendant Psychiatric Alternatives and Wellness Center Professional
11 Corporation ("PAWC" or "Defendant") Representative Plaintiff and Defendant collectively are
12 referred to in this Agreement as "the Parties."

13 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
14 concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total
15 maximum amount of One Million and Fifty Thousand Dollars (\$1,050,000.00) as provided in
16 Section 5.06 below ("Gross Fund Value Amount") upon the terms and conditions of this Agreement
17 and for the consideration set forth herein, including but not limited to, a release of all claims by
18 Representative Plaintiff and the Class Members as set forth herein.

19 **ARTICLE II**

20 **RECITALS**

21 This Agreement is made in consideration of the following facts:

22 WHEREAS on August 25, 2020, Representative Plaintiff filed her complaint in San
23 Diego County Superior Court and then filed a First Amended Complaint on October 12, 2020 (the
24 "Complaint") asserting the following causes of action on a class action and/or representative basis:

- 25 (1) Failure to Pay Minimum and Regular Monies;
26 (2) Failure to Pay All Overtime Monies;
27 (3) Failure to Provide Meal Periods;
28 (4) Failure to Provide Rest Periods;

- (5) Failure to Indemnify/Reimburse Expenses;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Failure to Timely Pay Monies Upon Separation of Employment;
- (8) Failure to Provide Sick Leave
- (9) Violation of Business & Professions Code §§17200, et seq.; and
- (10) Violations of the Private Attorneys General Act (“PAGA”);

WHEREAS, the Parties engaged in informal discovery, exchanging information, documents and reviewing and analyzing extensive data made available by Defendant which enabled the parties to thoroughly evaluate Plaintiff’s claims, the claims of the putative class, Defendant’s defenses, and the likely outcomes, risks and expense of pursuing litigation;

WHEREAS, the Parties attended an in-person mediation session with professional mediator Steven M. Vartabedian, Esq. and following post-mediation settlement negotiations reached terms resulting in this arm’s-length Settlement;

WHEREAS, a bona fide dispute exists as to whether any amount of monies or penalties are due from Defendant to any Class Member and/or to the California Labor and Workforce Development Agency (“LWDA”) and/or to any allegedly-aggrieved employees;

WHEREAS, the Parties desire to compromise and settle all issues and claims that have been or could have been brought, based on the facts and allegations in the Complaint, against Defendant or related persons in the Action, including all claims brought on a putative class, collective and representative basis in the Action;

WHEREAS, based on the discovery exchanged as well as their own independent investigation and evaluation, the Parties have considered the claims asserted by Plaintiff, the defenses asserted by Defendant, the risks associated with the continued prosecution of the Action, the cost of continued litigation through trial and appeals, and after considering all the circumstances, the Parties have concluded that the proposed settlement set forth in this Agreement is fair, adequate, and reasonable and confers substantial benefits upon the Class Members;

WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement, any of the terms of this Agreement, and any documents filed in connection with the Settlement shall

1 not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or
2 evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by
3 Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any
4 Released Parties, or (iv) the propriety of certifying a litigation class or collective (conditionally or
5 otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or
6 administrative proceeding; and this Agreement shall not be used by any Person for any purpose
7 whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other
8 than a proceeding to enforce the terms of the Agreement;

9 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
10 AGREED, by Plaintiff for herself and on behalf of the Participating Class Members and by
11 Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and
12 dismissed, on the merits and with prejudice, and the released Class Claims, shall be finally and fully
13 compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and
14 conditions hereafter set forth in this Agreement.

15 **ARTICLE III**

16 **DEFINITIONS**

17 As used in the Agreement, the following terms have the meanings specified below:

- 18 a. "Action" means the civil action commenced by Plaintiff on August 25, 2020 in the California
19 Superior Court, County of San Diego entitled *Melody Donboli v. Psychiatric Alternatives and*
20 *Wellness Center* ("Defendant" or "PAWC"), Case No. 37-2020-00029809-CU-OE-CTL,
- 21 b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including
22 the Class Notice, as defined below, attached as Exhibit A.
- 23 c. "Claims Administrator" and "Settlement Administrator" means the third-party administrator
24 approved by the court who will administer the settlement as set forth below.
- 25 d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in
26 administration of the Settlement, including, but not limited to address verification measures, mailing
27 of notice to the Class, calculation of Individual Settlement Payments, generation of Individual
28 Settlement Payment checks, administration of uncashed checks, generation of checks to Class

1 Counsel for attorney's fees and costs, generation of the check to the Representative Plaintiff for her
2 Service Award, generation of a check to the LWDA for its share of PAGA penalties, and generation
3 and submission of all tax-related documents, all pursuant to the terms of this Agreement.

4 e. "Class Claims" means all claims for monies, benefits and related penalties actually alleged or
5 that could have been alleged in the Action by Plaintiff, on behalf of herself and the Class Members,
6 based on the facts asserted in the Complaint, including but not limited to: (1) Failure to Pay
7 Minimum and Regular Monies; (2) Failure to Pay Overtime Monies; (3) Failure to Provide Meal
8 Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Indemnify/Reimburse
9 Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to
10 Pay Monies Due Upon Separation of Employment; (8) Failure to Provide Sick Leave; (9) Unfair
11 Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (10) PAGA Claim
12 for Civil Penalties (the "Litigation").

13 f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

14 Brian R. Short
15 Brian@shortlegal.com
16 Dorota A. James
17 Dorota@shortlegal.com
18 ShortLegal, APC
19 350 10th Avenue, Suite 1000
20 San Diego, California 92101
21 Telephone: (619) 272-0720
22 Facsimile: (619) 839-3129

23 g. "Class Member(s)" means all current and former Marriage and Family Therapists, Licensed
24 Clinical Social Workers and workers with similar job titles and/or job duties who worked for
25 Defendants in the State of California at any time between August 25, 2016, through the date the
26 court enters an order granting preliminary approval of the settlement (the "Class Period"), or 30
27 calendar days after the motion for preliminary approval is filed, whichever is earlier (which is
28 estimated to consist of approximately 60 current and former individuals).

h. "Class Notice" means the Notice of Proposed Class Action Settlement attached hereto as
Exhibit "A" or in substantially the same form as ultimately approved by the Court.

i. "Class Period" means the period from August 25, 2016, through the date the court enters an order granting preliminary approval or 30 calendar days after the motion for preliminary approval is filed, whichever date is earlier.

j. "Complete and General Release" means an irrevocable and unconditional release given only by Representative Plaintiff, releasing Defendant and the Released Parties from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from conduct occurring on or before the date Representative Plaintiff signs this Settlement Agreement, including but not limited to a release of any and all rights Plaintiff has to sue or bring any type of claim under (a) California state law; (b) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (c) the Employment Act of 1967, (d) the Civil Rights Act of 1991, (e) the Civil Rights Act of 1866 and 1870, (f) 42 U.S.C. § 1981, as amended, (g) Executive Order 11246, (h) the Americans with Disabilities Act 42 U.S.C. § 12101, et. seq, as amended, (i) the Family and Medical Leave Act, as amended, (j) the Equal Pay Act of 1963, as amended, (k) the Immigration and Reform Control Act, as amended, (l) the Occupational Safety and Health Act, as amended, (m) the Sarbanes-Oxley Act of 2002, as amended, (n) the Employment Retirement Income Security Act of 1974, as amended (except vested benefits), (o) the Worker Adjustment and Benefit Protection Act of 1990, as amended, (p) the Worker Adjustment and Retraining Notification Act, as amended, (q) any federal, state or common law claim or cause of action based on any alleged failure to pay monies, breach of contract, wrongful discharge, constructive discharge, retaliation, defamation, slander, liable, intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory estoppel, (r) any other tort or negligence claim or obligations arising out of any of Defendant's employment policies or practices, employee handbooks, and/or any statements by any employee or agent of Defendant whether oral or written; and (s) for reinstatement, back pay, bonus, attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering, medical expenses, damage to reputation, damage for personal, emotional or economic injury or damage of

any kind. This provision is intended by the Parties to be all-encompassing and to act as a full and total release of any claim, whether specifically enumerated herein or not, that Representative Plaintiff might have or have had, that exists or ever has existed on or prior to the date this Settlement Agreement is signed. This release includes a 1542 Waiver. The Parties understand and agree that the word "claims" includes all actions, group actions (including any pending or future collective, class, private attorney general or representative actions for which Representative Plaintiff may otherwise qualify as a putative class member or represented party), complaints and grievances that could potentially be brought by Representative Plaintiff against the Released Parties.

k. "Defendant" shall mean Psychiatric Alternatives and Wellness Center Professional Corporation.

l. "Defense Counsel" means counsel for Defendant, who are:

Leiann Laiks, Esq.
Fusion Legal
Email: leiann@fusionlegalsf.com
201 Spear Street, Suite 1100
San Francisco, CA 94105
Telephone: 415.625.3953

m. "Final Effective Date" means the date on which the Settlement is approved and the Court's Final Order and Judgment becomes Final. The Court's Final Order and Judgment becomes final upon the later of: (i) if no Class Member timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then sixty-one (61) calendar days following the date the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

n. "Final Fairness and Approval Hearing" means the hearing to determine whether the proposed Agreement settling the Action should be finally approved as fair, reasonable, and adequate; whether the proposed plan of allocation of the Net Fund Value Amount should be approved;

- whether the Representative Plaintiff's Service Award should be approved; and whether the applications of Class Counsel for attorney's fees and costs should be approved.
- o. "Final Order" refers to the order of the Court granting final approval of this Agreement as to the Final Settlement Class (defined below) and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent written agreement of the Parties.
- p. "Final Settlement Class" refers to the Representative Plaintiff and all Class Members who do not timely and validly exclude themselves from the class in compliance with the exclusion procedures set forth in Section 5.04.a of this Agreement.
- q. "Gross Fund Value Amount" means the One Million and Fifty Thousand Dollars (\$1,050,000.00) to be paid by Defendant as provided by this Agreement to settle this Action. This is an "all in" and non-reversionary number that includes, without limitation, all monetary benefits and payments for the Final Settlement Class Members, the Service Awards, the Class Counsel Award, the Settlement Administrator expenses and the PAGA Payment, and all other claims for interest, fees, and costs. In no event, will Defendant pay more than the Gross Fund Value Amount. However, in an unlikely instance that the IRS challenges the categorization of any payment made under the terms of this Agreement as "other income" as reported on IRS Forms-1099 issued to each Settlement Class Member pursuant to the terms of this Agreement for taxation purposes, Defendant agrees to pay the employer's share of payroll taxes as required under the relevant applicable state and federal law.
- r. "Individual Settlement Payments" means the amounts of money from the Net Fund Value Amount that shall be paid to the Participating Class Members. Individual Settlement Payments shall be each Participating Class Member's share of the Net Fund Value Amount (which share shall be determined by the calculations provided in this Agreement at Section 5.06.c.).
- s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.
- t. "LWDA" means the California Labor and Workforce Development Agency.

- 1 u. "Net Fund Value Amount" means the Gross Fund Value Amount of One Million and Fifty
2 Thousand Dollars (\$1,050,000.00) less all of the following amounts approved by the Court:
3 (1) Class Counsel's court-approved attorney's fees (not to exceed Three Hundred Fifty
4 Thousand Dollars and Zero Cents (\$350,000.00) to Plaintiff's counsel; (2) Class Counsel's
5 court-approved collective litigation costs (not to exceed Ten Thousand Dollars (\$10,000.00));
6 (3) the court-approved Service Award to be paid to the Representative Plaintiff (not to
7 exceed Seven Thousand and Five Hundred Dollars (\$7,500.00)); (4) the amount of court-
8 approved PAGA penalties to be paid to the LWDA of Eighteen Thousand Seven Hundred
9 and Fifty Dollars (\$18,750.00) which equates to 75% of the total amount allocated for
10 alleged PAGA Penalties of Twenty Five Thousand Dollars (\$25,000.00); and (5) the Claims
11 Administrator's court-approved fees in the anticipated amount of not more than Five
12 Thousand Dollars (\$5,000.00). The Net Fund Value Amount is estimated to be Six Hundred
13 and Fifty-Two Thousand and Five Hundred Dollars and Zero Cents (\$652,500.00) plus any
14 residuals from amounts requested in this paragraph which are not ultimately distributed to the
15 respective Parties due to invoicing of a lesser amount by the Claims Administrator or court
16 approval of a lesser amount than requested.
- 17 v. "Non-Participating Class Member(s)" means those Class Members who submit to the Claims
18 Administrator a valid and timely written request to be excluded from the Class pursuant to
19 Section 5.04.a below.
- 20 w. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code sections
21 2698, *et seq.*
- 22 x. "Participating Class Member(s)" means those Class Members who do not submit valid
23 requests for exclusion.
- 24 y. "Parties" means Representative Plaintiff and Defendant as defined herein.
- 25 z. "Released Parties" means Defendant, Defendant's former and present parents, affiliates,
26 partners, attorneys, shareholders, officers, directors, employees, administrators, fiduciaries,
27 trustees, agents, and any other predecessors, successors, assigns or legal representatives.
- 28 aa. "Representative Plaintiff" and/or "Donboli" means named Plaintiff Melody Donboli.

bb. "Service Award" means a monetary amount not to exceed Seven Thousand and Five Hundred Dollars (\$7,500.00) for the Representative Plaintiff which, subject to Court approval, shall be paid pursuant to Section 5.06.b.3 of the Agreement, as provided below.

cc. "Settlement" means the disposition of this Action and all related claims effectuated by this Agreement.

ARTICLE IV

CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

4.1. Certification Of Class And Claims. Solely for the purposes of reviewing and approval of this Settlement, the Parties stipulate and agree that the Court may certify a class consisting of all current and former Marriage and Family Therapists, Licensed Clinical Social Workers and workers with similar job titles and/or job duties who worked for Defendants in the State of California at any time between August 25, 2016, through the date the court enters an order granting preliminary approval of the settlement (the "Class Period"), or 30 calendar days after the motion for preliminary approval is filed, whichever is earlier.

4.2. Appointment Of Class Representative. Solely for the purposes of this Settlement, the Parties stipulate and agree Representative Plaintiff shall be appointed as representative of the Final Settlement Class.

4.3. Appointment Of Class Counsel. Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement Class.

4.4. Appointment Of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that ILYM Group, Inc. shall be appointed to serve as Settlement Administrator.

4.5. Conditional Nature Of Stipulation For Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant

1 expressly reserves its right to oppose claim or class certification in this Action and/or any other
2 action should this Settlement not become effective.

3 4.6. Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except
4 such proceedings necessary to implement and complete the Settlement, pending the Final Approval
5 hearing to be conducted by the Court.

6 **ARTICLE V**

7 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

8 Because the Parties have stipulated to the certification of the Class for settlement purposes
9 only, this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth
10 in Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is
11 contingent upon the approval and certification by the Court. If the Court does not grant either the
12 Preliminary or Final Approval of the settlement, the fact that the Parties were willing to stipulate to
13 class certification for the purposes of this Agreement shall have no bearing on, or be admissible in
14 connection with, the issue of whether any class should be certified in a non-settlement context or
15 serve as an admission of liability by Defendant. If the Final Effective Date does not occur, this
16 Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be
17 referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge
18 the propriety of class certification for any purpose if the settlement does not become final.

19 The Parties and their respective counsel shall take all steps that may be requested by the
20 Court relating to the approval and implementation of this Agreement and shall otherwise use their
21 respective best efforts to obtain Court approval and implement this Agreement. The procedure for
22 obtaining Court approval of and implementing this Agreement shall be as follows.

23 **Section 5.01: Motion for Conditional Class Certification and Preliminary Approval**

24 Representative Plaintiff shall bring a motion before the Court for an order conditionally
25 certifying the Class based on the preliminary approval of this Agreement, including the Class Notice
26 attached hereto as Exhibit "A." The date that the Court grants preliminary approval of this
27 Agreement shall be the "Preliminary Approval Date."
28

1 **Section 5.02: The Claims Administrator**

2 A court-appointed third-party Claims Administrator will serve to administer this Settlement
3 pursuant to the terms herein. The Claims Administrator will administer the settlement by
4 performing address verification for the Class Members, distributing the Class Notice and Reminder
5 Postcards, if necessary, performing skip traces, receiving and recording completed Settlement Opt-
6 Outs, adjudicating Class Members' disputes over monies earned during the Class Period in the
7 relevant positions as Marriage and Family Therapists, Licensed Clinical Social Workers and workers
8 with similar job titles and/or job duties, providing Class Counsel and counsel for Defendant with
9 weekly updates on the status of Opt-Outs, and handling any potential inquiries about the calculation
10 of the Individual Settlement Amounts. The Claims Administrator shall provide the Parties with the
11 names of individuals who submitted timely Opt-Outs after the expiration of the claims period for
12 inclusion in the proposed final approval Order. The actions of the Claims Administrator shall be
13 governed by the terms of this Stipulation. The Parties, through their counsel, may provide written
14 information needed by the Claims Administrator pursuant to the Stipulation.

15 All costs of administering the Settlement, including but not limited to all costs and fees
16 associated with preparing, issuing, and mailing any and all notices to Class Members, all costs and
17 fees associated with computing, processing, reviewing, and mailing the Individual Settlement
18 Payments, all costs and fees associated with preparing any tax returns and any other filings required
19 by any governmental taxing authority or agency, all costs and fees associated with preparing any
20 other notices, reports, or filings to be prepared in the course of administering disbursements from the
21 Net Fund Value Amount, and any other costs and fees incurred and/or charged by the Claims
22 Administrator in connection with the execution of its duties under this Agreement ("Claims
23 Administration Costs"), anticipated to be not more than Five Thousand Dollars (\$5,000), shall be
24 paid out of the Gross Fund Value Amount.

25 **Section 5.03: Notice to Class Members**

26 **a. Initial Identification of Class Members:** Within ten (10) calendar days following
27 entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a
28 confidential list in an Excel spreadsheet format containing the name and last known address,

1 telephone number, and social security number of each Class Member. This list shall also contain the
2 gross monies earned by each individual Class Member as Marriage and Family Therapist, Licensed
3 Clinical Social Worker or a worker with similar job title and/or job duties during the Class Period or
4 the commencement dates and termination dates (if applicable) relating to each individual Class
5 Member during the Class Period. This information shall be treated as confidential.

6 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member information
7 from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class
8 Members from the U.S. Postal Service and Accurint. Within fourteen (14) calendar days after
9 receipt of the Class Member information from Defendant, or receipt of any updated addresses from
10 the U.S. Postal Service or Accurint, whichever is later, the Claims Administrator shall mail the Class
11 Notice to all Class Members via first-class mail using the updated address information. With respect
12 to each Class Notice that is returned as undeliverable, the Claims Administrator shall promptly
13 attempt to determine a correct address using an additional skip trace service such as Experian and
14 shall re-send the Class Notice via first-class mail to any new address thereby determined within 10
15 calendar days of receiving the notice that the Class Notice was undeliverable.

16 **c. Notification to Counsel:** No later than ten (10) calendar days prior to the Final
17 Fairness and Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class
18 Counsel with a declaration attesting to completion of the notice process, including any attempts to
19 obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the
20 number of valid opt-outs that the Claims Administrator received. Upon approval by the court,
21 compliance with the procedures described in this Section 5.03.b shall constitute due and sufficient
22 notice to Class Members of this proposed Settlement and the Final Fairness and Approval Hearing
23 and shall satisfy the requirement of due process. Nothing else shall be required of the Parties, Class
24 Counsel, Defense Counsel, or the Claims Administrator to satisfy the requirements of providing
25 notice of the proposed Settlement and the Final Fairness and Approval Hearing.

26 **Section 5.04: Responses to Notice**

27 **a. Requests for Exclusion from Class**

28 For any Class Member other than Plaintiff to validly exclude himself or herself from the

1 Class and this Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by
2 the Class Member or his or her authorized representative, and must be sent to the Claims
3 Administrator, postmarked by no later than thirty (30) calendar days after the date the Claims
4 Administrator initially mails the Class Notice to the Class Members. For Notices re-mailed by the
5 Claims Administrator pursuant to section 5.03.b, the written request for exclusion must be
6 postmarked by no later than thirty (30) calendar days of the initial mailing of the Class Notice or
7 twenty (20) calendar days of the re-mailing, whichever is later. The Class Notice shall contain
8 individualized estimated payments, set forth instructions on how to opt-out and include the language
9 to be used in a request for exclusion. The date of the initial mailing (or re-mailing for Class Notices
10 re-mailed) of the Class Notice and the date the signed request for exclusion was postmarked, shall be
11 conclusively determined according to the records of the Claims Administrator. Any Class Member
12 who timely and validly requests exclusion from the Class and this Settlement shall become a Non-
13 Participating Class Member and shall not be entitled to any Individual Settlement Payment, shall not
14 be bound by the terms and conditions of this Agreement, and shall not have any right to object,
15 appeal, or comment thereon.

16 **b. Objections to Settlement**

17 For any Class Member to object to this Agreement, or any term of it, the person making the
18 objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no later than
19 thirty (30) calendar days after the Class Notice was initially mailed to the Class Members, file with
20 the Court and serve on Class Counsel and Defense Counsel, a written statement of the grounds of
21 objection, signed by the objecting Class Member or his or her attorney, along with all supporting
22 papers. For Class Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, written
23 statements of the grounds for objection must be filed and served no later than thirty (30) calendar
24 days after the initial mailing of the Class Notice or twenty (20) calendar days of the re-mailing,
25 whichever is later. The date of mailing or re-mailing of the Class Notice to the objecting Class
26 Member shall be conclusively determined according to the records of the Claims Administrator. The
27 Court retains final authority with respect to the consideration and admissibility of any Class Member
28 objections.

Counsel for the Parties shall file any response to the objections submitted by objecting Class Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or ten (10) calendar days after the receipt of the notice of objection, whichever is later.

c. Failure to Object

Any Class Member who fails to timely file and serve such a written statement of his or her intention to object shall be foreclosed from making any objection to this settlement, unless otherwise ordered by the Court.

d. Failure to Timely Opt-Out

Any Class Member who fails to submit a timely request for exclusion from the Class automatically shall be deemed a member of the Final Settlement Class whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order, and by the other rulings in the Action.

e. Right of Defendant to Void Agreement

If ten (10%) or more of Class Members make a valid request to be excluded from the Class as described in Section 5.04.a above and thus become Non-Participating Class Members, Defendant shall have the right, but not the obligation, to void the Agreement. If Defendant exercises that right to void the Agreement, then the Parties shall have no further obligations under the Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant shall pay the Claims Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises their right to void the Agreement. Defendant shall notify Class Counsel and the Court whether they are exercising the right to void the Agreement no later than ten (10) calendar days after the Claims Administrator notifies the Parties of the final total number of valid requests to be excluded.

Section 5.05: Final Fairness and Approval Hearing

a. Final Approval Hearings

On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be approximately one hundred and five (105) calendar days after the initial mailing of the Notice of Proposed Class Action Settlement, or on such other reasonable date as set by the Court, a Final

1 Fairness and Approval Hearing shall be held before the Court in order (1) to review this Agreement
2 and determine whether the Court should give it final approval; and (2) to consider any timely
3 objections made pursuant to Section 5.04.b above and all responses by the Parties to such objections.
4 At the Final Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to
5 this Agreement and shall submit to the Court a proposed Final Order approving the Settlement and
6 which shall be entered in the Action.

7 **b. Vacating, Reversal, or Material Modification of Final Order and Judgment on**
8 **Appeal or Review**

9 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
10 or application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such
11 that there is a material modification to the Settlement and that court's decision is not completely
12 reversed, and the Final Order and Judgment is not fully affirmed on review by a higher court, then
13 Representative Plaintiff and Defendant shall each have the right, but not the obligation, to void the
14 Settlement, which the Party must do by giving written notice to the other Parties, the final reviewing
15 court, and the Court not later than ten (10) business days after the final reviewing court's decision
16 vacating, reversing, or materially modifying the Final Order becomes final and non-appealable. If
17 either Party exercises its right to void the Agreement under this section, then the Parties shall have
18 no further obligations under the Agreement, including any obligation by Defendant to pay the Gross
19 Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement.
20 The Party exercising its right to void the Agreement shall pay the Claims Administrator's reasonable
21 fees and expenses incurred as of the date the Party exercises its right to void the Agreement. If the
22 Parties mutually agree to void the Agreement, then the Claims Administrator's reasonable fees and
23 expenses incurred as of the date the Parties exercise their right to void the Agreement shall be split
24 equally. A vacation, reversal, or modification of the Court's award of the Service Award or Class
25 Counsel's fees or costs that does not result in a change to the Gross Fund Value Amount shall not
26 constitute a vacation, reversal, or material modification of the Final Order and Judgment within the
27 meaning of this paragraph.
28

1 **Section 5.06: Settlement Payment Procedures**

2 **a. Settlement Sum**

3 In exchange for the releases set forth in this Agreement that will bind Plaintiff and all
4 members of the Final Settlement Class, Defendant agrees to pay the Gross Fund Value Amount of
5 One Million and Fifty Thousand Dollars (\$1,050,000.00), which is the total and all-inclusive
6 maximum amount Defendant shall be obligated to pay under the Settlement embodied by this
7 Agreement. In addition to the Gross Fund Value Amount in the event the IRS challenges the
8 categorization of any payment made under the terms of this Agreement as “other income” as
9 reported on IRS Forms-1099 issued to each Settlement Class Member pursuant to the terms of this
10 Agreement for taxation purposes, Defendant agrees to pay the employer’s share of payroll taxes as
11 required under the relevant applicable state and federal law. The Settlement Sum includes Class
12 Counsel's attorney’s fees of not more than Three Hundred Fifty Thousand and Zero Cents
13 (\$350,000.00) and litigation costs not to exceed Ten Thousand Dollars (\$10,000.00), a Service
14 Award for Representative Plaintiff of not more than Seven Thousand and Five Hundred Dollars
15 (\$7,500.00), the PAGA penalty payment of Twenty Five Thousand Dollars (\$25,000.00), which
16 includes the payment of Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750.00) to the
17 LWDA, the Claims Administration Costs anticipated to be not more than Five Thousand Dollars
18 (\$5,000.00). Claims Administrator shall issue a Form 1099-MISC, or other tax form as required by
19 the IRS, to Class Counsel, the Representative Plaintiff and the Claims Administrator.

20 The Net Fund Value Amount is estimated to be Six Hundred Fifty-Two Thousand and Five
21 Hundred Dollars and Zero Cents (\$652,500.00) plus any residuals from amounts requested in this
22 paragraph which are not ultimately distributed to the respective Parties due to invoicing of a lesser
23 amount.

24 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action and
25 subject to this Settlement being approved by the Court, Defendant shall pay an aggregate sum not to
26 exceed One Million and Fifty Thousand Dollars (\$1,050,000.00). Defendant shall deliver the first
27 payment of Six Hundred and Zero Cents (\$600,000) to a Qualified Settlement Fund (“QSF”)
28 maintained by the Claims Administrator within 30 calendar days of the execution of this Settlement

1 Agreement. A second payment of \$250,000 shall be deposited by the Defendant to the QSF by
2 November 1, 2021 and a final payment of \$200,000 shall be deposited by Defendant to the QSF by
3 December 31, 2021. These funds shall be disbursed by the Claims Administrator within ten (10)
4 calendar days of the Effective Date. If the Court does not grant final approval upon the material
5 terms of the settlement (other than reduction of the requested attorney's fees, costs or class
6 representative service award) or if ten (10%) or more to the putative class members opt-out as set
7 forth in Section 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no
8 further obligation under this Agreement. If the Court grants final approval of the settlement, the
9 settlement funds shall be disbursed as follows:

10 **1. Reasonable attorney's fees and litigation expenses:** Class Counsel have
11 stated they shall request that the Court award them reasonable attorney's fees in an amount up to
12 Three Hundred Fifty Thousand and Zero Cents (\$350,000.00) and collective litigation costs in an
13 amount up to Ten Thousand Dollars (\$10,000.00). Defendant has agreed neither to oppose nor
14 adversely comment on the fees and litigation costs request. The award of reasonable attorney's fees
15 and litigation costs granted by the Court shall be paid out of the Gross Fund Value Amount within
16 twenty (20) calendar days of the Final Effective Date in accordance with Section 5.06.d.2-3, below.
17 Class Counsel may elect to have the Settlement Administrator, directly or indirectly, disperse all or
18 part of its attorney's fees paid to Class Counsel in periodic payments, through a structured
19 settlement. Class Counsel will bear any and all costs, fees, and expenses of administration for any
20 periodic payments of such attorney's fees and shall be fully responsible for any taxes, costs,
21 liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising
22 out of, related to, or incurred in connection with any such periodic payments, including, without
23 limitation, any such issues, claims and/or disputes brought by the state or federal government
24 concerning the payment of taxes thereon. Class Counsel shall indemnify, defend, and hold
25 Defendant harmless for any and all taxes, costs, liabilities, attorneys' fees, and/or penalties resulting
26 from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any
27 such periodic payments.

28 **2. Reasonable expenses of the Claims Administrator:** The Claims

1 Administrator shall be paid out of the Gross Fund Value Amount and such payment shall not
2 constitute payment to any Participating Class Member(s). The Claims Administration Costs,
3 expected not to exceed Five Thousand Dollars (\$5,000.00), shall be paid out of the settlement funds
4 within ten (10) calendar days after the Final Effective Date in accordance with Section 5.06.d.1,
5 below.

6 **3. Reasonable Service Award to the Representative Plaintiff:**

7 Subject to Court approval, the Representative Plaintiff shall make a separate application for
8 up to Seven Thousand and Five Hundred Dollars (\$7,500.00) as a Service Award. The Service
9 Award shall be paid by check made payable to the Representative Plaintiff, which shall be delivered
10 by the Claims Administrator to Class Counsel within ten (10) calendar days after the Final Effective
11 Date. The Service Award shall be paid out of the Gross Fund Value Amount and shall not constitute
12 payment(s) to any Participating Class Member(s).

13 It is the intent of the Parties that the Service Award represent payment to Representative
14 Plaintiff for the additional risks undertaken in prosecuting this action and her service to the Class
15 Members, and not monies, thus, the Claims Administrator shall not withhold any taxes from the
16 Service Award. The Service Award shall be reported on a Form 1099, which shall be provided by
17 the Claims Administrator to the Representative Plaintiff and to the pertinent taxing authorities as
18 required by law. Although it is the contemplation of the Parties that the Service Award does not
19 represent monies, the Internal Revenue Service, the California Franchise Tax Board, or some other
20 taxing authority may take the position that some or all of the Service Award constitutes monies for
21 income tax and withholding purposes. The Representative Plaintiff agrees to assume the
22 responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and
23 any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant
24 from the Service Award paid under this Agreement and any liability assessed against Defendant for
25 failure to withhold the required amount, if any.

26 **4. PAGA Payment:** A payment of Twenty-Five Thousand Dollars (\$25,000.00)
27 shall be allocated to PAGA penalties, Eighteen Thousand Seven Hundred and Fifty Dollars
28 (\$18,750.00) of which shall be payable to the California LWDA within ten (10) calendar days of the

1 Final Effective Date. The PAGA penalties shall be paid out of the Gross Fund Value Amount. The
2 remaining portion of the PAGA payment shall be distributed pro-rata to the Final Settlement Class
3 as set forth below in Section 5.06.c.1.

4 **5. Allocation to Participating Class Members:** The amount remaining from
5 the Gross Fund Value Amount after deducting the court-awarded reasonable attorney's fees and
6 litigation costs, reasonable Claims Administration Costs, reasonable Service Award payment, and
7 PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed
8 to members of the Final Settlement Class in accordance with the formula set forth below in Section
9 5.06.c. Final Settlement Class members are not eligible to receive any compensation other than the
10 Individual Settlement Payments discussed below. Claim Administrator shall issue a Form 1099-
11 MISC, or other tax form as required by the IRS, for all payments made to the Final Settlement Class.

12 **6. Change in Corporate Policy.** Defendant also agrees to undertake a thorough
13 review of its policies and practices regarding classification of Marriage Family Therapists and
14 Licensed Clinical Social Workers within 18-months of the date of Final Approval of this Settlement,
15 for purposes of an attempt to comply with California law.

16 **c. Individual Settlement Payments:** The Individual Settlement Payments shall be
17 calculated as follows:

18 **1. Calculation:** Each Class Member of the Final Settlement Class who does not Opt-
19 Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on
20 information contained in Defendant's pertinent records, and calculated as follows:

21 i) Each Class Member of the Final Settlement Class shall be allocated a
22 payment equal to the pro rata portion of gross monies earned by that class member while
23 working by Defendant within the State of California in the position of a Marriage and Family
24 Therapist, Licensed Clinical Social Worker or a worker with similar job title and/or job
25 duties during the Class Period in proportion to the total aggregated gross monies earned by
26 All Settlement Class Members in the position of a Marriage and Family Therapist, Licensed
27 Clinical Social Worker or a worker with similar job title and/or job duties during the class
28 period.

1 ii) The Claims Administrator shall calculate the Individual Settlement
2 Payments based on the information contained in Defendant's pertinent records.

3 **2. Dispute Resolution:** The Claims Administrator shall have the initial responsibility
4 of resolving all disputes that arise during the claims administration process, including, without
5 limitation, disputes, if any, regarding the calculation of the total number of gross monies earned by
6 each Class Member where the information submitted by Defendant based on its records differs from
7 the information submitted by Class Members. In resolving such disputes, Defendant's records shall
8 be presumed to be accurate and correct, and shall be final and binding, unless the information
9 submitted by the Claimant (e.g., checks, bank account statements, etc.) proves otherwise. In the
10 event the Claims Administrator cannot resolve a dispute based on a review of the available
11 information, the Claims Administrator shall request a conference call between the Claims
12 Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. After such
13 call, the Claims Administrator shall resolve the dispute, and such resolution shall be final and
14 binding on the Class Member. In advance of the conference call, the Claims Administrator shall fax
15 or email copies of all available information to all counsel.

16 **3. Fair Formula:** The Parties hereby agree that the formula for allocating payments to
17 each Class Member of the Final Settlement Class as provided herein is reasonable and designed to
18 provide a fair settlement to the Members of the Final Settlement Class.

19 **4. Allocation of Net Fund Value Amount Payments and Taxes:** All Individual
20 Settlement Payments made to Class Members of the Final Settlement Class under this Agreement
21 shall be allocated as follows: Fifty percent (50%) of the Individual Settlement Payments distributed
22 to each Settlement Class Member will be considered interest, and will be reported as such to each
23 Settlement Class Member on an IRS Form 1099. The remaining fifty percent (50%) of the amount
24 distributed to each Settlement Class Member will be considered penalties and any other non-wage
25 related amount, if any, and will be reported as such to each Settlement Class Member on an IRS
26 Form 1099. There is no allocation to wages because Defendant disputes that Class Members were
27 ever anything other than independent contractors and the Class Members were never compensated
28 previously as employees. Defendant shall not make as part of this Agreement, nor be required to

1 make, any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses,
2 403(b), profit-sharing plans or other benefits, related to monies paid as a result of this Agreement.

3 The Parties understand and agree that Defendant is not providing tax or legal advice, or
4 making representations regarding tax obligations or consequences, if any, related to this Agreement,
5 and that the Class Members of the Final Settlement Class will assume any such tax obligations or
6 consequences that may arise from this Agreement, and that Final Settlement Class Members shall
7 not seek any claim against or indemnification from Defendant in this regard. The Parties agree that,
8 in the event that any taxing body determines that additional taxes are due from any Final Settlement
9 Class Member, such Class Member assumes all responsibility for the payment of any such taxes.

10 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no later than
11 30 calendar days of the execution of this Settlement Agreement, Defendant shall deliver the first
12 payment of Six Hundred and Zero Cents (\$600,000) to a Qualified Settlement Fund (“QSF”) maintained
13 by the Claims Administrator. A second payment of \$250,000 shall be deposited by the Defendant to the
14 QSF by November 1, 2021 and a final payment of \$200,000 shall be deposited by Defendant to the QSF
15 by December 31, 2021. Payments from this Qualified Settlement Fund shall fund the settlement and
16 meet the obligations of Section 5.06.b and be paid by the Claims Administrator within the time
17 frames set forth below in sections 5.06.d.1-5.

18 Payments of the following from the Qualified Settlement Fund shall be made in accordance
19 with the following subparagraphs:

20 **1. Claims Administrator:** The Claims Administrator shall be paid the Claims
21 Administration costs from the Qualified Settlement Fund, expected to be not more than Five
22 Thousand Dollars (\$5,000), ten (10) calendar days after the Final Effective Date.

23 **2. Class Counsel's Fees:** The amounts approved by the Court for Class
24 Counsel's fees shall be paid by the Claims Administrator within ten (10) calendar days after the Final
25 Effective Date and the Claims Administrator shall pay the total attorney’s fee award to Class
26 Counsel.
27
28

1 **3. Class Counsel's Costs:** The amount approved by the Court for Class
2 Counsel's costs shall be paid by the Claims Administrator within ten (10) calendar days after the
3 Final Effective Date.

4 **4. Class Representative's Service Award:** The amount approved by the Court
5 for the Class Representative's Service Award shall be paid by the Claims Administrator to Class
6 Counsel within ten (10) calendar days after the Final Effective Date.

7 **5. Individual Settlement Payments:** Within fifteen (15) calendar days of the
8 last date for Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and
9 5.04.b, above, the Claims Administrator shall provide to the Parties a written statement of all
10 Individual Settlement Payments to be paid to all Final Settlement Class Members. The Claims
11 Administrator will distribute the Individual Settlement Payments to all Final Settlement Class
12 Members within ten (10) calendar days of the Final Effective Date. The Claims Administrator shall
13 issue to each Final Settlement Class Member a check in the amount of his or her Individual
14 Settlement Payment, as described in Section 5.06.c.1 (less applicable taxes and withholdings) via
15 first-class mail. Uncashed checks not negotiated within 120 calendar days of their issuance are void.
16 All Final Settlement Class Members shall be bound by this Agreement and the releases herein even
17 if the Class Member does not cash the settlement check issued to him or her comprising his or her
18 Individual Settlement Payment. If any Final Settlement Class Member has not cashed his or her
19 Settlement Payment check within ninety (90) calendar days of issuance, the Settlement
20 Administrator shall mail that Class Member a postcard reminding him/her of the deadline to cash
21 such check and providing information as to how to obtain a reissued check in the event the check
22 was lost, stolen or misplaced. Any checks issued to Final Settlement Class Members shall remain
23 valid and negotiable for one hundred twenty (120) calendar days from the date of issuance. After all
24 settlement funds have been distributed and all checks issued to Final Settlement Class Members have
25 either been cashed or have remained uncashed and gone stale, the Settlement Administrator shall
26 handle in accordance with Code of Civil Procedure § 384(b) (as amended on January 1, 2019). The
27 unpaid residue, plus any interest that accrued thereon, shall be paid by the Settlement Administrator
28 to a mutually agreed upon neutral *cy pres* recipient, which will be a nonprofit organization or

1 foundation that supports projects that will benefit the class or similarly situated persons, subject to
2 Court approval.

3 **e. Residuals**

4 If any amount of the Qualified Settlement Fund Amount remains unallocated as a result of
5 modification to the requested attorney's fees, costs, Class Representative Service Award or Claims
6 Administration Costs, this amount shall become part of the Net Fund Value Amount and be
7 distributed pursuant to Section 5.06.c.

8 **f. Circular 230 Disclaimer**

9 Each party to this Agreement (for purposes of this section, the "acknowledging party" and
10 each party to this Agreement other than the acknowledging party, an "other party") acknowledges
11 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
12 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
13 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
14 within the meaning of United States Treasury Department Circular 230 (31 CFR part 10, as
15 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
16 independent legal and tax counsel for advice (including tax advice) in connection with this
17 agreement, (b) has not entered into this Agreement based upon the recommendation of any other
18 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
19 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
20 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
21 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
22 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
23 acknowledging party of the tax treatment or tax structure of any transaction, including any
24 transaction contemplated by this Agreement.

25 **ARTICLE VI**

26 **LIMITATIONS ON USE OF THIS SETTLEMENT**

27 **Section 6.01: No Admission**

28 Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed

1 to comply with the law in any respect, that Defendant has any liability to anyone based upon the
2 claims asserted in the Action, and Defendant asserts that, but for this Settlement, a class should not
3 be certified in this Action. This Agreement is entered into solely for the purpose of compromising
4 highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission
5 of liability or wrongdoing by Defendant or an admission of the truth or falsity of any of the Claims
6 in the Action.

7 Defendant has concluded that any further defense of this litigation would be protracted and
8 expensive for all Parties. Substantial amounts of time, energy and resources of Defendant have been
9 spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the
10 Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in
11 reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms
12 set forth in this Agreement to put to rest the Claims as set forth in the Action.

13 As to the claims and allegations in this Action, including but not limited to wage claims,
14 meal and rest period claims, overtime pay claims, minimum wage claims, claims for uncompensated
15 work time, wage statement claims, claims for waiting time penalties, unfair business practices
16 claims, and claims for PAGA penalties, Defendant denies and continues to deny each of those claims
17 and contentions alleged by Representative Plaintiff and the Class in the Action. Defendant has
18 repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues
19 to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the
20 Action.

21 **Section 6.02: Non-Evidentiary Use**

22 Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor
23 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or
24 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
25 including but not limited to, evidence of a presumption, concession, indication, or admission by any
26 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
27 disclosed, referred to, or offered in evidence against any of the Released Parties in any further
28 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding, except

1 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to
2 establish that a Class Member has resolved any of his/her claims released through this Agreement.

3 **Section 6.03: Nullification**

4 The Parties have agreed to the certification of the Class for the sole purpose of effectuating
5 this Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the
6 Court should for any reason fail to approve this Settlement in the form agreed to by the Parties
7 (except for the amount of attorney's fees, costs and Service Awards awarded), or (c) the Court
8 should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or
9 declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this
10 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
11 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
12 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
13 stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
14 admissible in connection with, the issue of whether a class should be certified in a non-settlement
15 context in this Action or any other action, and in any of those events, Defendant expressly reserves
16 the right to oppose any motion for class certification.

17 Invalidation of any material portion of this Agreement, except for the amount of attorney's
18 fees, costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
19 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

20 **ARTICLE VII**

21 **RELEASES**

22 **Section 7.01: Releases by Class Members**

23 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

24 **Section 7.02: Release of All Claims Relating To The Action**

25 Upon the court's final approval of the class settlement and entry of Final Order and
26 Judgment, each member of the Final Settlement Class shall be deemed to have released and
27 discharged each Defendant and Released Party, including all of Defendants' former and present
28 parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and

agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime monies, including failure to pay monies for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay monies pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse business expenses, (g) failure to provide paid sick leave, (h) unfair business practices, and (i) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

Section 7.03: 1542 Release By Plaintiff Melody Donboli

In addition to the Settlement Class Members' Released Class Claims described above, in exchange for the consideration recited in this Agreement, including but not limited to the court-approved Class Representative Service Award, Donboli enters into a Complete and General Release which releases, acquits, and discharges any covenants not to sue Defendant or any of the Released Parties for any claim, whether known or unknown, which Donboli has ever had, or hereafter may claim to have, arising on or before the date that she signs this Agreement, including without limitation to, any claims relating to or arising out of any aspect of her relationship, or the separation from her relationship with Defendant, any claims for unpaid compensation, monies, reimbursement for business expenses, penalties, or waiting time penalties under the California Labor Code, the California Business and Professions Code, or any federal, state, county or city law or ordinance regarding monies or compensation; any claims for employee benefits, including without limitation, any claims under the Employee Retirement Income Security Act of 1974; any claims of employment discrimination on any basis, including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code, or any other federal, state, county or city law or ordinance regarding

1 employment discrimination. Donboli acknowledges and agrees that the foregoing general release is
2 given in exchange for the consideration provided to her under this Agreement by Defendant.
3 However, this release shall not apply to claims for workers' compensation benefits, unemployment
4 insurance benefits, pension or retirement benefits, or any other claim or right that as a matter of law
5 cannot be waived or released.

6 Donboli expressly waives any rights or benefits available to her under the provisions of
7 Section 1542 of the California Civil Code, which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
9 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
10 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
11 HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
12 WITH THE DEBTOR OR RELEASED PARTY.

13 Donboli understands fully the statutory language of Civil Code section 1542 and, with this
14 understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether
15 known or unknown, which she ever had, or hereafter may claim to have, arising on or before the date
16 of her signature to this Agreement, and specifically waives all rights she may have under California
17 Civil Code section 1542.

18 ARTICLE VIII

19 MISCELLANEOUS PROVISIONS

20 **Section 8.01: Amendments or Modification**

21 The terms and provisions of this Agreement may be amended or modified only by an express
22 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

23 **Section 8.02: Representations and Warranties of Defendant's Records**

24 Defendant represents and warrants that the documents provided to Class Counsel during and
25 after mediation that constituted a material condition to this Settlement are substantially accurate to
26 the best of their knowledge.

27 **Section 8.03: Assignment**

28 None of the rights, commitments, or obligations recognized under this Agreement may be

1 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
2 written consent of each other Party and their respective counsel. The representations, warranties,
3 covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under
4 this Agreement and shall not be construed to confer any right or to avail any remedy to any other
5 person.

6 **Section 8.04: Governing Law**

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

10 **Section 8.05: Entire Agreement**

11 This Agreement, including the Exhibit referred to herein, which form an integral part hereof,
12 contains the entire understanding of the Parties hereto with respect of the subject matter contained
13 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
14 text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be
15 controlling. There are no restrictions, promises, representations, warranties, covenants, or
16 undertakings governing the subject matter of this Agreement other than those expressly set forth or
17 referred to herein. This Agreement supersedes all prior agreements and understandings among the
18 Parties hereto with respect to the settlement of the Action including correspondence between Class
19 Counsel and Defense Counsel and the Memorandum of Understanding signed by the Parties on July
20 29, 2021. No rights hereunder may be waived except in writing.

21 **Section 8.06: Counterparts and Fax Signatures**

22 This Agreement, and any amendments hereto, may be executed in any number of
23 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
24 each of which when executed and delivered shall be deemed to be an original and all of which
25 counterparts taken together shall constitute one instrument. It shall not be necessary in making proof
26 of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
27 A fax or electronic signature on this Agreement shall be as valid as an original signature.
28

1 **Section 8.07: Meet and Confer Regarding Disputes**

2 Should any dispute arise among the Parties or their respective counsel regarding the
3 implementation or interpretation of this Agreement, a representative of Class Counsel and a
4 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
5 disputes prior to submitting such disputes to the Court.

6 **Section 8.08: Agreement Binding on Successors**

7 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest
8 of each of the Parties.

9 **Section 8.09: Cooperation in Drafting**

10 The Parties have cooperated in the negotiation and preparation of this Agreement. This
11 Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel,
12 was the drafter or participated in the drafting of this Agreement.

13 **Section 8.10: Fair Settlement**

14 Representative Plaintiff, Defendant, Class Counsel, and Defense Counsel have arrived at this
15 Agreement through arm's-length negotiation and believe that this Agreement reflects a fair,
16 reasonable, and adequate settlement of the Action considering all relevant factors, current and
17 potential, and believe the Agreement is consistent with public policy and fully complies with
18 applicable provisions of law.

19 **Section 8.11: Headings**

20 The descriptive heading of any section or paragraph of this Agreement is inserted for
21 convenience of reference only and does not constitute a part of this Agreement and shall not be
22 considered in interpreting this Agreement.

23 **Section 8.12: Notice**

24 All notices, demands, or other communications given under this Agreement shall be in
25 writing and deemed to have been duly given as of the third business day after mailing by first-class
26 United States mail, addressed as follows:

27 *To Plaintiff and the Class:*

28 Brian R. Short
 Brian@shortlegal.com

1 Dorota A. James
2 Dorota@shortlegal.com
3 ShortLegal, APC
4 350 10th Avenue, Suite 1000
5 San Diego, California 92101
6 Telephone: (619) 272-0720

To Defendant:

7 Leiann Laiks, Esq.
8 Fusion Legal
9 Email: leiann@fusionlegalsf.com
10 201 Spear Street, Suite 1100
11 San Francisco, CA 94105
12 Telephone: 415.625.3953

13 **Section 8.13: Enforcement and Continuing Jurisdiction of the Court**

14 To the extent consistent with class action procedure, this Agreement shall be enforceable by
15 the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
16 continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent
17 to enforce and effectuate the terms and intent of this Agreement.

18 **Section 8.14: Mutual Full Cooperation**

19 The Parties agree to fully cooperate with each other to accomplish the terms of this
20 Agreement, including but not limited to execution of such documents, and to take such other action
21 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
22 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to
23 effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach
24 agreement on the form or content of any document needed to implement the Settlement, or on any
25 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
26 Parties agree to seek the assistance of the Court, after conferral as described above.

27 **Section 8.15: Authorization to Act**

28 Class Counsel warrant and represent that they are authorized by the Representative Plaintiff,
and Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action
required to effectuate the terms of this Agreement, except for signing the documents, including but
not limited to this Agreement, that are required to be signed by the Parties.

1 **Section 8.16: No Reliance on Representations**

2 The Parties have made such investigation of the facts and the law pertaining to the matters
3 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
4 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any
5 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
6 rights, or with regard to the advisability of making and executing this Agreement, or with respect to
7 any such matters. No representations, warranties, or inducements have been made to any Party
8 concerning this Agreement other than those expressly set forth or referred to herein.

9 **Section 8.17: No Collateral Attack**

10 This Agreement shall not be subject to collateral attack by any Class Member or any
11 recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall
12 include, but not be limited to, claims that the Class Member failed for any reason to receive timely
13 notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

14 **Section 8.18: No Public Comment/Non-Disparagement Clause**

15 Representative Plaintiff and Class Counsel will not make any public disclosure of the
16 settlement terms until after the settlement is preliminarily approved by the Court. Class Counsel will
17 take all steps necessary to ensure Representative Plaintiff is aware of, and will encourage her to
18 adhere to, the restriction against any public disclosure of the settlement terms until after the
19 settlement is preliminarily approved by the Court. None of these prohibitions on public comment
20 shall prohibit Class Counsel's communications with the Court as necessary to finalize the settlement.

21 Representative Plaintiff and Defendant represent and agree that they have not and will not
22 directly or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For
23 the purposes of this Agreement, "disparage" shall include making or publishing any statement or
24 other content, whether in written, oral, electronic, digital or other form, truthful or otherwise, which
25 may reasonably be expected to adversely affect the business, public image, reputation or goodwill of
26 the other Party, including, without limitation, their operations, employees, directors or related
27 persons, and their past, present or future services and the facts relating to Representative Plaintiff's
28 past relationship with PAWC.

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EXECUTION BY PARTIES AND COUNSEL

Dated: September 22, 2021 

By: _____
For Defendant PAWC

Dated: September __, 2021

Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

Dated: September 22, 2021

Leiann Laiks, Esq.
Fusion Legal
Attorneys for Defendant

Exhibit A Notice of Proposed Class Action Settlement

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EXECUTION BY PARTIES AND COUNSEL

Dated: September 22, 2021 
By:
For Defendant PAWC

Dated: September 20, 2021

Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

Dated: September 22, 2021

Leiann Laiks, Esq.
Fusion Legal
Attorneys for Defendant

Exhibit A Notice of Proposed Class Action Settlement

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MELODY DONBOLI, Individually and on
behalf of all similarly-situated employees of
Defendants in the State of California,

Plaintiff,

v.

PSYCHIATRIC ALTERNATIVES AND
WELLNESS CENTER PROFESSIONAL
CORPORATION and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 37-2020-00029809-CU-OE-CTL

**NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL**

Judge: Carolyn Caietti

Dept.: C-70

Date Complaint Filed: August 25, 2020

TO: *All current and former Marriage and Family Therapists, Licensed Clinical Social Workers and workers with similar job titles and/or job duties who worked for Defendants in the State of California at any time between August 25, 2016, through the date the court enters an order granting preliminary approval of the settlement (the "Class Period"), or 30 days after the motion for preliminary approval is filed, whichever is earlier.*

**If You Qualify For Inclusion in The Settlement Class And You Wish To Participate
In The Settlement And Receive A Settlement Payment, You Are Not Required To
Take Any Action.**

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before <<30 days after notice mailed>>, 2022. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the San Diego County Superior Court, entered <<preliminary approval date>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is <<_____>>. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On August 25, 2020, Melody Donboli filed a class action complaint, amended by the First Amended Complaint filed on October 12, 2020, ("Complaint") in the San Diego County Superior Court entitled *Melody Donboli v. Psychiatric Alternatives and Wellness Center* ("Defendant" or "PAWC"),

Case No. 37-2020-00029809-CU-OE-CTL, on behalf of herself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by *Psychiatric Alternatives and Wellness Center* in which she asserted claims for: (1) Intentional misclassification of its employees as independent contractors; failed to provide legally compliant rest periods and meal periods; (2) Failure to Pay Minimum and Regular Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5) Failure to Authorize and Permit Rest Periods (6) Failure to Indemnify/Reimburse Expenses; (7) Failure to Provide and Maintain Accurate Itemized Wage Statements; (8) Failure to Pay Wages Due Upon Separation of Employment; (9) Failure to Provide Sick Leave; (10) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (11) PAGA Claim for Civil Penalties (the “Litigation”).

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Melody Donboli has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of PAWC’s class action and representative claims and Defendant’s defenses to those claims. Ms. Donboli’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

PAWC and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. **Gross Fund Value Amount:** Defendant will pay \$1,050,000.00 to settle the Litigation. The \$1,050,000.00 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. **Class Counsel’s Attorney’s Fees:** Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount (\$350,000.00), subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. **Litigation Costs:** Class Counsel anticipates requesting an award of no more than \$10,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. **Class Representative Service Award:** Melody Donboli anticipates requesting a service award of no more than \$7,500.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. **Private Attorneys General Act (PAGA) Allocation:** The Parties have designated \$25,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$18,750.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$6,250.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, ILYM Group, Inc. (hereafter “ILYM”) to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to hereafter “ILYM” administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to ILYM will be approximately \$5,000, which shall be paid from the Gross Fund Value Amount.

G. **Net Fund Value Amount:** Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel’s Attorney’s Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. **Class Defined:** “Class” shall mean *“All current and former Marriage and Family Therapists, Licensed Clinical Social Workers and workers with similar job titles and/or job duties who worked for Defendants in the State of California at any time between August 25, 2016, through the date the court enters an order granting preliminary approval of the settlement (the “Class Period”), or 30 days after the motion for preliminary approval is filed, whichever is earlier.”*

I. **Settlement Class Defined:** “Settlement Class” – means all those persons who are members of the Class and who have not properly and timely excluded themselves (“opted out”) from the Litigation.

J. **Settlement Period Defined:** “Settlement Period” shall mean August 25, 2016 through [the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.]

K. **Allocation of Net Fund Value Amount Among Settlement Class Members:** Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on the number of gross monies earned by each Settlement Class Member during the Settlement Period in their positions as Marriage and Family Therapists, Licensed Clinical Social Workers (or otherwise similar job duties and/or title) in proportion to the total aggregated gross wages earned by all the Settlement Class Members during the Settlement Period.

L. **Tax Treatment of Payments to Settlement Class Members:** The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, fifty percent (50%) of the amount distributed to each Settlement Class Member will be considered interest and will be reported as such to each Settlement Class Member on an IRS Form 1099. The remaining fifty percent (50%) of the amount distributed to each Settlement Class Member will be considered penalties and any other non-wage related amount, if any, and will be reported as such to each Settlement Class Member on an IRS Form 1099. There is no allocation to wages because Defendant disputes that Class Members were ever anything other than independent contractors and the Class Members were never compensated previously as employees. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

M. **An Internal Review of Corporate Payroll and Timekeeping Policy.** Defendant has agreed to undertake an analysis of internal payroll and timekeeping policy to ensure compliance with all applicable California laws.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Melody Donboli and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is <<_____>>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must file a written objection and a notice of intention to appear with the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, 330 West Broadway, San Diego, CA 92101, by<<30 days after notice mailing>>, 2022, and serve copies to the following:

CLASS COUNSEL:

Brian R. Short
Dorota A. James
SHORTLEGAL, APC
350 10th Avenue, Suite 1000
San Diego, CA 92101
Tel: (619) 272-0720

COUNSEL FOR DEFENDANT:

Leiann Laiks, Esq.
Fusion Legal
Email: leiann@fusionlegalsf.com
201 Spear Street, Suite 1100
San Francisco, CA 94105
Tel: 415.625.3953

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates when you worked as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than <<30 days after notice mailed>>, 2022. **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the San Diego County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<30 days after notice mailed>>, 2022. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be

on _____, 2022 at _____ a.m. in Department 70 of the San Diego Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before<<30 days after notice mailed>>, 2022, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the court’s final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse business expenses, (g) failure to provide paid sick leave, (h) unfair business practices, and (i) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 30 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department 70 of the San Diego County Superior Court, Hall of Justice Courthouse, 330 W. Broadway, San Diego, CA 92101 on << _____ >>, 2022, at _____ a.m./p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney’s Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney’s fees and reimbursement of expenses will be on file with the Court no later than 16 court days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Class Action Settlement Agreement, which is available via the internet at [Claims Administrator Website] and which is also on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, are also available via the internet at [Claims Administrator Website] or may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, Hall of Justice, 330 W. Broadway, San Diego, CA 92101 or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT

Exhibit 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MELODY DONBOLI, Individually and on
behalf of all similarly-situated employees of
Defendants in the State of California,

Plaintiff,

v.

PSYCHIATRIC ALTERNATIVES AND
WELLNESS CENTER PROFESSIONAL
CORPORATION and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 37-2020-00029809-CU-OE-CTL

**NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL**

Judge: Carolyn Caietti

Dept.: C-70

Date Complaint Filed: August 25, 2020

TO: *All current and former Marriage and Family Therapists, Licensed Clinical Social Workers and workers with similar job titles and/or job duties who worked for Defendants in the State of California at any time between August 25, 2016, through the date the court enters an order granting preliminary approval of the settlement (the "Class Period"), or 30 days after the motion for preliminary approval is filed, whichever is earlier.*

**If You Qualify For Inclusion in The Settlement Class And You Wish To Participate
In The Settlement And Receive A Settlement Payment, You Are Not Required To
Take Any Action.**

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Pursuant to the order of the San Diego County Superior Court, entered <<preliminary approval date>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is <<_____>>. This is only an estimate. The final amount may change and is subject to final approval by the Court.

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I. BACKGROUND OF THE CASE

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Case No. 37-2020-00029809-CU-OE-CTL, on behalf of herself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by *Psychiatric Alternatives and Wellness Center* in which she asserted claims for: (1) Intentional misclassification of its employees as independent contractors; failed to provide legally compliant rest periods and meal periods; (2) Failure to Pay Minimum and Regular Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5) Failure to Authorize and Permit Rest Periods (6) Failure to Indemnify/Reimburse Expenses; (7) Failure to Provide and Maintain Accurate Itemized Wage Statements; (8) Failure to Pay Wages Due Upon Separation of Employment; (9) Failure to Provide Sick Leave; (10) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (11) PAGA Claim for Civil Penalties (the “Litigation”).

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Melody Donboli has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of PAWC’s class action and representative claims and Defendant’s defenses to those claims. Ms. Donboli’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

PAWC and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. **Gross Fund Value Amount:** Defendant will pay \$1,050,000.00 to settle the Litigation. The \$1,050,000.00 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. **Class Counsel’s Attorney’s Fees:** Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount (\$350,000.00), subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. **Litigation Costs:** Class Counsel anticipates requesting an award of no more than \$10,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. **Class Representative Service Award:** Melody Donboli anticipates requesting a service award of no more than \$7,500.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. **Private Attorneys General Act (PAGA) Allocation:** The Parties have designated \$25,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$18,750.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$6,250.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, ILYM Group, Inc. (hereafter “ILYM”) to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to hereafter “ILYM” administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to ILYM will be approximately \$5,000, which shall be paid from the Gross Fund Value Amount.

G. **Net Fund Value Amount:** Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel’s Attorney’s Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. **Class Defined:** “Class” shall mean “*All current and former Marriage and Family Therapists, Licensed Clinical Social Workers and workers with similar job titles and/or job duties who worked for Defendants in the State of California at any time between August 25, 2016, through the date the court enters an order granting preliminary approval of the settlement (the “Class Period”), or 30 days after the motion for preliminary approval is filed, whichever is earlier.*”

I. **Settlement Class Defined:** “Settlement Class” – means all those persons who are members of the Class and who have not properly and timely excluded themselves (“opted out”) from the Litigation.

J. **Settlement Period Defined:** “Settlement Period” shall mean August 25, 2016 through [the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.]

K. **Allocation of Net Fund Value Amount Among Settlement Class Members:** Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on the number of gross monies earned by each Settlement Class Member during the Settlement Period in their positions as Marriage and Family Therapists, Licensed Clinical Social Workers (or otherwise similar job duties and/or title) in proportion to the total aggregated gross wages earned by all the Settlement Class Members during the Settlement Period.

L. **Tax Treatment of Payments to Settlement Class Members:** The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, fifty percent (50%) of the amount distributed to each Settlement Class Member will be considered interest and will be reported as such to each Settlement Class Member on an IRS Form 1099. The remaining fifty percent (50%) of the amount distributed to each Settlement Class Member will be considered penalties and any other non-wage related amount, if any, and will be reported as such to each Settlement Class Member on an IRS Form 1099. There is no allocation to wages because Defendant disputes that Class Members were ever anything other than independent contractors and the Class Members were never compensated previously as employees. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

M. **An Internal Review of Corporate Payroll and Timekeeping Policy.** Defendant has agreed to undertake an analysis of internal payroll and timekeeping policy to ensure compliance with all applicable California laws.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Melody Donboli and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is <<____>>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must file a written objection and a notice of intention to appear with the Clerk of the San Diego County Superior Court, Hall of Justice Courthouse, 330 West Broadway, San Diego, CA 92101, by <<30 days after notice mailing>>, 2022, and serve copies to the following:

CLASS COUNSEL:

Brian R. Short
Dorota A. James
SHORTLEGAL, APC
350 10th Avenue, Suite 1000
San Diego, CA 92101
Tel: (619) 272-0720

COUNSEL FOR DEFENDANT:

Leiann Laiks, Esq.
Fusion Legal
Email: leiann@fusionlegalsf.com
201 Spear Street, Suite 1100
San Francisco, CA 94105
Tel: 415.625.3953

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates when you worked as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than <<30 days after notice mailed>>, 2022. **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the San Diego County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<30 days after notice mailed>>, 2022. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be

on _____, 2022 at _____ a.m. in Department 70 of the San Diego Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before<<30 days after notice mailed>>, 2022, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the court’s final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse business expenses, (g) failure to provide paid sick leave, (h) unfair business practices, and (i) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 30 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department 70 of the San Diego County Superior Court, Hall of Justice Courthouse, 330 W. Broadway, San Diego, CA 92101 on << _____ >>, 2022, at _____ a.m./p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney’s Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney’s fees and reimbursement of expenses will be on file with the Court no later than 16 court days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Class Action Settlement Agreement, which is available via the internet at [Claims Administrator Website] and which is also on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, are also available via the internet at [Claims Administrator Website] or may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, Hall of Justice, 330 W. Broadway, San Diego, CA 92101 or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT