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19 **Attorneys for Defendant**

20 **STERILIZATION AND FUMIGATION SERVICES, INC. f/k/a “COSMED**
21 **STERILIZATION AND FUMIGATION SERVICES, INC.”; and PHIL DELEON**

22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **COUNTY OF STANISLAUS**

24 **DOMINIC GARCIA,**

25 **Plaintiff,**

26 **vs.**

27 **COSMED STERILIZATION AND**
28 **FUMIGATION SERVICES, INC.; PHIL**
DELEON; and DOES 1-10, inclusive,

Defendants.

Case No.: CV-20-005263

[PROPOSED] STIPULATED ORDER
APPROVING SETTLEMENT PURSUANT
TO LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004

The parties hereto, Plaintiff Dominic Garcia (“Plaintiff”) and Defendant Sterilization and Fumigation Services, Inc. f/k/a Cosmed Sterilization and Fumigation Services, Inc., (“Defendant”) (collectively the “Parties”), by and through their respective counsel of record, hereby stipulate as follows:

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1 1. Plaintiff was employed as an hourly, non-exempt worker at Defendant's
2 pasteurization and sterilization plant in Newman, California, from September 10, 2018, until
3 February 10, 2020.

4 2. On November 25, 2020, Plaintiff filed the above-captioned lawsuit asserting a
5 representative cause of action against Defendant under the Labor Code Private Attorneys
6 General Act of 2004 ("PAGA"). Plaintiff's core PAGA claim relates to a holiday bonus paid to
7 non-exempt employees at Defendant's Newman plant. Plaintiff alleges that Defendant failed to
8 include the bonus for purposes of calculating the non-exempt employees "regular rate of pay" in
9 relation to overtime wages and sick pay. Plaintiff also alleges pay discrepancies based on race as
10 to a portion of these non-exempt employees.

11 3. Defendant vigorously denies Plaintiff's allegations, both on factual and legal
12 bases, including that the holiday bonus is discretionary, and therefore not required to be included
13 in the "regular rate" calculation, that race played no part in any pay discrepancies, and that
14 Defendant's pay practices are and were compliant with the Equal Pay Act and its progeny.

15 4. Plaintiff and Defendant conducted extensive discovery, including several rounds
16 of written discovery totaling 21 sets of discovery requests, and depositions of Plaintiff,
17 Defendant's Newman plant manager, and Defendant's Production Supervisor at the Newman
18 plant. Through these discovery efforts, the Parties identified approximately 43 current and
19 former California hourly, non-exempt employees of Defendant as allegedly "aggrieved
20 employees" within the relevant PAGA statute-of-limitations period, beginning on September 21,
21 2019.

22 5. On May 19, 2022, Plaintiff and Defendant mediated this matter with mediator
23 Lisa Klerman, a highly experienced and respected class-action and PAGA mediator. As a result
24 of the mediation, through arms-length negotiations, Plaintiff and Defendant agreed, pending
25 Court approval, to resolve Plaintiff's PAGA claims according the following terms set forth
26 below, as well as to resolve Plaintiff's individual claims in a separate confidential settlement.

27 6. Plaintiff's counsel is Nicholas F. Scardigli and William J. Gorham III of Mayall
28 Hurley P.C. and experienced employment law and PAGA practitioners, and Defendant's counsel

1 is Jordon R. Ferguson of Locke Lord LLP and also an experienced employment law and PAGA
2 practitioner.

3 7. Labor Code § 2699(l) requires that the Court review and approve any proposed
4 settlement agreement pursuant to PAGA.

5 8. Plaintiff and Plaintiff's counsel concluded, after taking into account the sharply
6 disputed factual and legal issues involved in this action, the risks attending further prosecution,
7 the informal discovery and briefing conducted to date, and the substantial benefits received and
8 to be received pursuant to the compromise and settlement of the PAGA claims, that settlement
9 on the terms herein set forth is in the best interest of all interested parties and beneficiaries.

10 9. Plaintiff and Plaintiff's counsel have balanced their evaluation of the validity and
11 strength of the asserted claims against the problems of proof and the legal standards governing
12 the claims alleged, as well as the vigorously disputed claim asserted by Defendant that Plaintiff
13 cannot prove his representative claims on behalf of all hourly/non-exempt employees in
14 California in any manageable way that comports with due process. Based on this evaluation,
15 Plaintiff's counsel believes that the settlement reached satisfied the public policies of PAGA and
16 is fair to all parties and beneficiaries.

17 10. Similarly, Defendant and Defendant's counsel concluded there were benefits
18 associated with settling. Although Defendant disputes the individual and representative
19 allegations in this action as well as Plaintiff's core theory of liability, Defendant took into
20 account the sharply disputed factual and legal issues involved, the risk attending further defense,
21 the expense, time, and burden of protracted litigation, and the desire to put the controversy to
22 rest, and based on these factors Defendant and Defendant's counsel agreed to this settlement
23 without any admission of fault or liability, or acknowledgement as to the viability of Plaintiff's
24 theory of liability under PAGA.

25 11. The Parties have entered into a settlement of Plaintiff's PAGA claims ("the
26 Settlement") as follows: a maximum total payment of \$6,500 ("the Settlement Amount") for civil
27 penalties, inclusive of attorneys' fees and costs and costs of settlement administration.

28 12. The terms of the Settlement include the following definitions:

- 1 a. "Aggrieved Employees" means any and all individuals who are or previously
2 were employed by Defendant as non-exempt employees during the PAGA
3 Period, and who received at least one wage statement during the PAGA
4 Period.
- 5 b. "Covered Claims" means any and all PAGA claims or PAGA causes of action
6 arising under Labor Code section 2698, *et seq.* during the PAGA Period that
7 were alleged, or that reasonably could have been alleged in the Action based
8 on the facts alleged in Plaintiff's Complaint.
- 9 c. "Effective Date" means the date the Court enters an order granting approval of
10 the Settlement pursuant to this Agreement.
- 11 d. "Eligible Pay Periods" means the total number of pay periods that each
12 Aggrieved Employee was employed during the PAGA Period.
- 13 e. "PAGA Period" means the period from September 19, 2019, through the date
14 of Court approval of the Settlement.
- 15 f. "Released Parties" means Defendant and each of its respective current and
16 former owners, parent corporations, subsidiaries, affiliates, divisions,
17 members, officers, directors, shareholders, advisors, joint venturers, insurers,
18 attorneys, accountants, agents, employees, independent contractors, principals,
19 successors, predecessors, partners, representatives, and assigns.

20 13. Within 15 calendar days of the Effective Date, Defendant will distribute the
21 Settlement Amount as follows:

- 22 a. The gross amount of \$1,500.00, payable to Mayall Hurley P.C. for PAGA
23 counsel's costs;
- 24 b. The gross amount of \$3,750.00, payable to the California Labor and
25 Workforce Development Agency ("LWDA"), representing 75% of the
26 Settlement Amount after subtracting PAGA Counsel's costs; and
- 27 c. The gross aggregate amount of \$1,250.00, payable to the alleged
28 Aggrieved Employees, representing 25% of the Settlement Amount after

1 subtracting PAGA Counsel's attorneys' costs. Each alleged Aggrieved
2 Employee shall receive a pro-rata allocation of this amount based on the
3 number of Eligible Pay Periods that he or she worked during the PAGA
4 Period as a percentage of the total number of Eligible Pay Periods worked
5 by all alleged Aggrieved Employees during the PAGA Period.

- 6 1. Settlement checks issued to these individuals shall expire 180
7 days from the date of their issuance. If there are uncashed
8 checks following this period, Defendant will ensure that
9 uncashed funds shall be forwarded to the California State
10 Controllers' Office Unclaimed Property Fund in the name of
11 the alleged Aggrieved Employee.
- 12 2. These payments shall constitute non-wage income for the
13 alleged aggrieved employees.
- 14 3. The checks to the alleged Aggrieved Employees shall be
15 remitted to each individual's last known address—or in the
16 case of Plaintiff, his counsel. The check to the LWDA shall be
17 remitted the Department of Industrial Relations, Accounting
18 Unit, 455 Golden Gate Ave., 10th Fl., San Francisco, CA
19 94102 and shall be accompanied by a copy of the order
20 approving settlement or judgment.
- 21 4. No 1099s or other tax forms shall be issued to the alleged
22 Aggrieved Employees or the LWDA

23 14. Upon the Court's approval of the Settlement, and except as to the right to enforce
24 the terms and conditions of the Settlement, Plaintiff, on behalf of himself and the State of
25 California, and all of the alleged Aggrieved Employees, hereby fully releases the Released
26 Parties from any and all PAGA claims or PAGA causes of action arising under Labor Code
27 section 2698, *et seq.* during the PAGA Period that were alleged, or that reasonably could have
28 been alleged in the Action based on the facts alleged in Plaintiff's Complaint. To the extent

1 permissible by law, the Released Parties shall be relieved from any and all tax reporting
2 responsibility related to the Settlement, such that, without limitation, all reporting obligations to
3 the alleged aggrieved employees for the Settlement shall be borne by the alleged aggrieved
4 employees, and that the Released Parties shall be held harmless from any and all liabilities that
5 may result from tax reporting obligations related to the Settlement. The alleged Aggrieved
6 Employees and the State of California are deemed by operation of the Settlement to have agreed
7 not to sue or otherwise make a claim against any of the Released Parties for any Covered Claims.

8 15. The Parties agree that if any deadline specified in this Settlement falls on a
9 Saturday, Sunday, or Court holiday, the deadline will be automatically extended to the next
10 regular business day. Unless specified otherwise, all references to “days” shall mean calendar
11 days.

12 16. The Parties agree that upon the Court’s approval of the Settlement, this Settlement
13 will be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6.
14 Even after the approval of this Settlement, this Court will have and retain continuing jurisdiction
15 over this litigation and over all Parties and the alleged Aggrieved Employees, to the fullest extent
16 necessary or convenient to enforce and effectuate the terms and intent of this Settlement and all
17 matters provided for in it, and to interpret it.

18 17. The parties have entered into this Settlement to resolve the dispute that has arisen
19 between them and to avoid the burden, expense and risk of continued litigation. In entering into
20 this Settlement, Defendant does not admit, and specifically denies, that it has violated any
21 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any
22 statute or any other applicable laws, regulations or legal requirements; violated or breached any
23 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct
24 with respect to the above-captioned litigation. Neither this Settlement, nor any of its terms or
25 provisions, nor any of the negotiations connected with it, shall be construed as an admission or
26 concession by Defendant of any such violations or failures to comply with any applicable law.
27 Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement and
28 its terms and provisions shall not be offered or received as evidence in any action or proceeding

1 to establish any liability or admission on the part of Defendant or to establish the existence of
2 any condition constituting a violation of, or a non-compliance with, federal, state, local or other
3 applicable law.

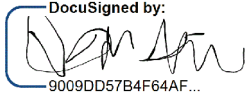
4 18. Plaintiff and Plaintiff's counsel agree that the terms of this Settlement (including,
5 but not limited to, the Settlement Amount), the negotiations leading to the execution of this
6 stipulation, and the Settlement itself, shall not be discussed with or publicized or promoted to the
7 media (including, without limitation, legal periodicals and publications such as "Jury Verdicts,"
8 or disclosure of the Settlement on any web site of Plaintiff's counsel), or the public at large,
9 without the advance written consent of Defendant. The Parties intend this Paragraph to prohibit
10 Plaintiff and Plaintiff's counsel from discussing, answering questions about, promoting or
11 publicizing the Settlement, its terms, or the negotiations leading to the Settlement with anyone
12 other than the Court or those individuals necessary to effectuate the terms of the Settlement.
13 Notwithstanding the foregoing, Plaintiff and Plaintiff's counsel (1) may tell the public in general
14 only that certain claims "have been resolved by the Parties;" and only if asked for comment, and
15 (2) may disclose the terms of the Settlement (a) in appropriate filings with the Court in this case;
16 (b) where required by law (e.g., income tax returns); and (c) to accountants or other tax
17 professionals for the purpose of preparing tax returns.

18 19. The Parties jointly request that the Court approve the penalties sought as part of
19 the Settlement pursuant to PAGA.

20 20. Pursuant to Labor Code § 2699(1)(2), Plaintiff has submitted the instant proposed
21 order and stipulation to the LWDA via the LWDA's online filing system.

22 **IT IS SO STIPULATED.**
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3 Dated: 6/13/2022
4 _____

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DOMINIC GARCIA

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6 Dated: _____

**STERILIZATION AND FUMIGATION
SERVICES, INC.**

9 By:
10 Its:

11 **DATED:**

MAYALL HURLEY P.C.

12
13 By _____



Nicholas F. Scardigli
William J. Gorham III

Attorneys for Plaintiff
DOMINIC GARCIA

16 **DATED:**

LOCKE LORD LLP

18 By _____

Jordon R. Ferguson

Attorneys for Defendants
STERILIZATION AND FUMIGATION
SERVICES, INC. f/k/a "COSMED
STERILIZATION AND FUMIGATION
SERVICES, INC."; and PHIL DELEON

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4 Dated: _____

DOMINIC GARCIA

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6 Dated: 6/13/2022

Diane Newell
STERILIZATION AND FUMIGATION
SERVICES, INC.

9 By:
10 Its:

11 **DATED:**

MAYALL HURLEY P.C.

12
13 By _____

Nicholas F. Scardigli
William J. Gorham III
Attorneys for Plaintiff
DOMINIC GARCIA

14
15
16 **DATED:**

LOCKE LORD LLP

17
18 By _____

Jordon R. Ferguson
Attorneys for Defendants
STERILIZATION AND FUMIGATION
SERVICES, INC. f/k/a "COSMED
STERILIZATION AND FUMIGATION
SERVICES, INC."; and PHIL DELEON

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4 Dated: _____

DOMINIC GARCIA

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6 Dated: _____

**STERILIZATION AND FUMIGATION
SERVICES, INC.**

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9 By:
10 Its:

11 **DATED:**

MAYALL HURLEY P.C.

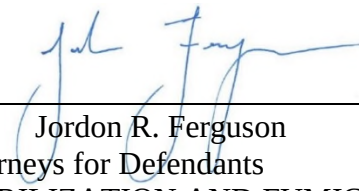
12 By _____

13 Nicholas F. Scardigli
14 William J. Gorham III
15 Attorneys for Plaintiff
DOMINIC GARCIA

16 **DATED:** June 13, 2022

LOCKE LORD LLP

17
18 By _____

19 
Jordon R. Ferguson
Attorneys for Defendants
STERILIZATION AND FUMIGATION
20 SERVICES, INC. f/k/a "COSMED
21 STERILIZATION AND FUMIGATION
22 SERVICES, INC."; and PHIL DELEON
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IT IS HEREBY ORDERED that the foregoing stipulation is hereby approved and that the Court approves the Parties' PAGA settlement pursuant to Labor Code § 2699(l), and enters judgment thereon, incorporating the terms and conditions as set forth in the parties' Stipulated Order Approving Settlement Pursuant to Labor Code Private Attorneys General Act of 2004. This judgment shall be binding not only on the named parties to this litigation but also on all Aggrieved Employees and the State of California, who are hereby barred by the doctrine of res judicata from re-litigating the Covered Claims.

DATED:

[Proposed] Stipulated Order Approving PAGA Settlement
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