

PAGA SETTLEMENT AGREEMENT AND RELEASE

Plaintiff Rita Moisson, individually and in her capacity as a representative of the State of California, on behalf of other members of the general public similarly situated, on the one hand, and Brio Clinical, a Wyoming Corporation (“Brio”) together with its principal Vincenzo Sorrentino on the other hand, enter into this Settlement Agreement and Release of Liability under the Private Attorneys General Act of 2004 (“Settlement”) as follows:

I. DEFINITIONS

As used in this Settlement, these terms shall have these meanings:

“Action” means the civil action filed in the Superior Court of the State of California, County of San Bernardino entitled, *Rita Moisson v. Brio Clinical, et.al.*, Case No. CIVSB2200428.

“Defendants” means Brio Clinical, Inc., and Vincenzo Sorrentino.

“Defense Counsel” means Laura McSwiggin and Kimia Sehati of Epport, Richman, and Robbins, LLP.

“Effective Date” of the Settlement means the later of the date upon which : (i) the Order granting approval of the PAGA Settlement by the San Bernardino County Superior Court, or other court assuming jurisdiction becomes non-appealable, and (ii) the Order Approving the Stipulation to Dismiss the Class Action Allegations becomes non-appealable.

“LWDA” means the California Labor & Workforce Development Agency.

“PAGA” means the California Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§ 2698 et seq.

“PAGA Period” means June 1, 2020 (which is when Defendant Brio commenced hiring employees) through the Effective Date of this Settlement.

“PAGA Settlement Members” means all employees employed by Defendant Brio, either directly or as a joint employer, in the State of California during the PAGA Period. Defendants represent that the total number of PAGA Settlement Members is approximately 23 individuals.

“Plaintiff” means Rita Moisson, individually and in her capacity as a representative of the State of California on behalf of other aggrieved employees.

“Plaintiff’s Counsel” means Ronojoy Guha of the Guha Law Firm.

“Parties” means Plaintiff and Defendants.

“Released Claims” means any claims to recover civil penalties under PAGA or any potential claims that arise out of PAGA which are in any way related to the employment with Brio, whether known or unknown, to recover wages, damages, penalties, attorney fees, litigation costs, restitution, or equitable relief, which Plaintiff and/or the PAGA Settlement Members alleged, or could have alleged, against the Released Parties, arising out of the facts, circumstances, and primary rights in the operative Complaint in this Action.

“Released Parties” means Defendants and all of Brio’s past and present owners, officers, directors, shareholders, employees, agents, assigns, attorneys, insurers, parent companies, subsidiaries, and affiliates, and their respective predecessors, successors, assigns, and entity which could be jointly liable with Defendants.

“Settlement Administrator” means CAC Services, LLC.

II. RECITALS

A. On November 9, 2020, Plaintiff’s Counsel sent a PAGA Notice Letter to the LWDA on behalf of Plaintiff under California Labor Code § 2699.3. Plaintiff sought to represent herself and all PAGA Settlement Members. Never did the LWDA indicate its intention to investigate the alleged violations referenced in the letter.

B. On June 3, 2022, Plaintiff filed a Complaint in the Superior Court for the State of California, County of San Bernardino, alleging claims for penalties under PAGA.

C. The Parties subsequently agreed to engage in mediation, which took place on December 16, 2022 with experienced wage and hour, and representative action mediator, Jill Sperber, Esq. The Parties had previously engaged in formal and informal discovery before the mediation and had exchanged significant documents. Among the issues raised by the Defendants was their position that: (a) the PAGA claims were barred in their entirety by the statute of limitations; and (b) even if they were not barred, since Plaintiff uniquely did not benefit from Brio’s expense reimbursement program, no violation could exist as to anyone other than Plaintiff.

The Parties also engaged in extensive settlement negotiations at the mediation, which involved substantial offers and counteroffers between the Parties, after which the matter settled.

D. Counsel for all Parties have thoroughly investigated the facts relating to the claims alleged in the operative Complaint and made a thorough study of the legal principles applicable to the claims asserted against Defendants and the defenses thereto. Plaintiff's Counsel concluded the Settlement is fair, reasonable, and adequate, given all known facts and circumstances, including the defenses asserted by Defendants, which Defendants planned to raise in a motion for summary judgment, potential findings regarding liability that would be adverse to Plaintiff's position herein, and numerous potential appellate issues.

E. Defendants deny, and continue to deny, every claim and contention alleged in the Action and the operative Complaint, and have always maintained that they never engaged in any unlawful acts regarding the matters alleged.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree:

III. NON-ADMISSION OF LIABILITY

Based on the factual and legal issues involved, the expense and time necessary to prosecute the Action through trial, the risks, uncertainty, and costs of further prosecution, the difficulty of proof necessary to establish a manageable group for purposes of liability, the anticipated motion for summary judgment on grounds of both the statute of limitations bar and the lack of potential liability to anyone other than Plaintiff, the appellate issues, and the relative benefits to the PAGA Settlement Members of an expeditious resolution to the Action, the Parties have concluded that the terms set forth in this Settlement are fair, reasonable, adequate, and in the best interests of the PAGA Settlement Members.

By entering into this Settlement, Defendants deny any liability for any of the claims in the Action, and any other potential or unknown claims based on wage and hour violations under California or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement, may be construed as, or may be used as,

an admission, concession, or indication by or against Defendants of any unlawful conduct, fault, wrongdoing or liability whatsoever. Defendants specifically deny that they have engaged in any unlawful or wrongful conduct against Plaintiff or the PAGA Settlement Members.

IV. TERMS OF THE PAGA SETTLEMENT

A. Gross Settlement Amount

The total value of the PAGA settlement amount is \$7,500.00. Plaintiff shall receive nothing from the PAGA Settlement. Defendants shall pay a monetary PAGA settlement payment in a total amount not to exceed \$7,500.00 (“Gross Settlement Amount”). The Gross Settlement Amount is the maximum monetary amount Defendants can be required to pay under this PAGA Settlement.

B. Settlement Administrator Fees and Costs

The Settlement Administrator shall calculate and distribute payments to individual PAGA Settlement Members and to the LWDA. The Settlement Administrator will skip trace and re-mail all returned, undeliverable mail within seven days of receiving notice that the mailing was undeliverable. The Settlement Administrator will also handle payment of Plaintiff’s Counsel’s attorney fees and costs as approved by the Court. An amount not to exceed \$1,500.00 shall be allocated as Settlement Administrator Fees.

C. Attorney Fees and Litigation Costs

\$2,625.00 (*i.e.*, 35% of the Total Settlement Value) shall be allocated as attorneys’ fees and issued via an IRS Form 1099. No amount shall be allocated as litigation costs. The Settlement Administrator will wire transfer the payment to Plaintiff’s Counsel.

D. PAGA Fund

\$3,375.00 of the Gross Settlement Amount shall be allocated toward payment to the LWDA and PAGA Settlement Members (“PAGA Fund”). 75% of the PAGA Fund (\$2,531.25) will be attributed to the LWDA’s share, and 25% of the PAGA Fund (\$843.75) will be allocated among the PAGA Settlement Members based on their proportionate shares of workweeks during the PAGA Period as set forth in Section V.B., *infra*.

E. Court Approval Required

Accordingly, the Parties enter into this Agreement on a conditional basis. In the event that the Court does not execute the Stipulation and Order dismissing the Class Action Allegations, or in the event that such Order or Final Judgment does not become final for any reason, or is modified in any material respect, or in the event that the Effective Date, as defined herein, does not occur, this Agreement shall be deemed null and void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose. Defendants deny all of Plaintiffs' claims as to liability and damages as well as Plaintiffs' class allegations, and does not waive, but rather expressly reserves all rights to challenge all such claims and allegations upon all procedural and factual grounds including the assertion of any and all defenses, if the Final Judgment does not become final for any reason, or in the event that the Effective Date does not occur.

V. COMPUTATION AND DISTRIBUTION OF PAGA FUND

A. Funding and Payment of PAGA Fund

Within 15 days of the Effective Date, Defendants will deposit the PAGA Settlement Fund into the Qualified Settlement Fund ("QSF") to be established by the Third-Party Administrator. The Third-Party Administrator shall distribute the PAGA Fund to the LWDA, to the PAGA Settlement Members, and to Plaintiff's Counsel. Payments to PAGA Settlement Members shall be made via U.S. Mail to their last known addresses.

B. Formula for Calculating Shares of the PAGA Fund

The portion of the PAGA Fund to be paid to each PAGA Settlement Member shall be determined based on the following workweek formula.

The payment to PAGA Settlement Members will be based on the number of workweeks worked by each PAGA Settlement Member during the PAGA Period. Partial workweeks will be rounded up to the nearest full workweek. The value of a workweek will be calculated by dividing the portion of the PAGA Fund paid to PAGA Settlement Members by the total number of workweeks worked by all PAGA Settlement Members during the PAGA Period. The resulting

workweek value will then be multiplied by the number of workweeks worked by each PAGA member to calculate the individual PAGA payment (“Individual Payment”). Defendant’s records shall be determinative for purposes of calculating the number of workweeks worked and any payments to PAGA Settlement Members.

C. Distribution of PAGA Fund

The Settlement Administrator shall pay an amount equivalent to 75% of the PAGA Fund to the LWDA, or as otherwise directed by the Court. A copy of the check that the Settlement Administrator mails to the LWDA shall be provided to Plaintiff’s Counsel within five days of mailing.

The Settlement Administrator shall also distribute the Individual Payment to each PAGA Settlement Member, or as otherwise directed by the Court, by postmarked First Class U.S. Mail. The Settlement Administrator shall maintain a list of the postmarked dates for the original mailing of each Individual Payment to the PAGA Settlement Members and a list of PAGA Settlement Members who did not receive the Individual Payment, if any, due to the inability to locate a valid address.

All settlement checks will remain valid and negotiable for 180 days from the date of their execution. After 180 days, any uncashed checks will be void and shall be paid to the Legal Aid of San Bernardino County in the names of the PAGA Settlement Members who did not cash such checks. Such distribution satisfies California Code of Civil Procedure § 384 requirements.

The Settlement Administrator will prepare and issue IRS Form 1099s to PAGA Settlement Members who received an Individual Payment.

VI. RELEASE OF CLAIMS

A. Claims Released by the LWDA and PAGA Settlement Members

Upon the Effective Date, the LWDA and PAGA Settlement Members, including Plaintiff, fully release and forever discharge the Released Parties from any Released Claims during the PAGA Period. The Parties agree that the settlement of this Action shall be effective as a full and final accord and satisfaction, settlement of, and as a bar to, the claims for civil penalties for

resulting from the Labor Code violations alleged, or that could have been alleged, against Defendants arising out of the facts, circumstances, and primary rights in the operative Complaint. The Parties further agree the settlement of this Action shall be binding on Plaintiff, the PAGA Settlement Members, the LWDA, the State of California, Defendants, and the Released Parties. Because of this release, the PAGA Settlement Members cannot sue under, or recover in any other action brought under PAGA, California Labor Code §§ 2698 *et seq.*, for any violations of the Released Claims that took place during the PAGA Period.

B. Tax Treatment

PAGA Settlement Members will assume any tax obligations or consequences that may arise from this Settlement. PAGA Settlement Members release any and all claims they have or may have against Defendants or Released Parties for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement or any compensation provided at any time by Defendants or any of the Released Parties. The PAGA Settlement Members shall not contact Defendants, any of the Released Parties, or Defense Counsel.

VII. MISCELLANEOUS PROVISIONS

A. Mutual Full Cooperation

Plaintiff, Defendants, Plaintiff's Counsel, and Defense Counsel agree to cooperate fully with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents, and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement.

B. Signatories' Authority

The signatories hereto represent they are authorized to enter into this Settlement.

C. Binding Nature of the Settlement

This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. Plaintiff represents, covenants, and warrants she has not directly or

indirectly, assigned, transferred, or encumbered any claim, demand, action, cause of action, or rights released in the Released Claims in this Settlement. This Settlement shall be binding upon Plaintiff and the PAGA Settlement Members. This Settlement may be amended or modified only by a written instrument signed by Plaintiff and Defendants. No rights under this Settlement may be waived except in writing.

D. Joint Drafting of Settlement Documents

The Parties arrived at this Settlement because of arm's-length negotiations, considering all relevant factors, present and potential. This Settlement has been drafted jointly by Plaintiff's Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed against any of the Parties.

E. Execution of the Settlement Agreement

All executed copies of this Settlement and photocopies thereof shall have the same force and effect and shall be as legally binding and enforceable as the original.

F. No Press Release or Publicity Regarding Terms of the Settlement

Plaintiff and Plaintiff's Counsel, Defendants, and Defense Counsel agree that they will issue no media or press release, initiate any contact with the media or the press, respond to any media or press inquiry, or have any communications with the media or the press about the fact, amount, or terms of this Settlement. Plaintiff and Plaintiff's Counsel shall not publicize or refer to the fact or amount of the Settlement on their websites, social media, any other marketing materials, or legal publications. Plaintiff and Plaintiff's Counsel will not state on their websites, social media, any other marketing materials, or legal publications, that Defendants engaged in any act contrary to California law, or denied payment owed to its employees, or otherwise committed any violations of the California Labor Code or any other local, state, or federal law, otherwise disparage Defendants, or otherwise identify Defendants. Defendants may report the Settlement or results of this lawsuit if required to do so by public disclosure regulatory requirements, or with respect to any financial or other disclosures, which in their judgment are necessary.

G. Continuing Jurisdiction of the Court

The above-entitled Court shall retain jurisdiction over all disputes between and among the Parties arising out of the Settlement, including but not limited to the interpretation and enforcement of the terms herein.

H. Advice of Counsel

Each Party represents and agrees that they have been advised or are fully aware of their right to discuss all aspects of this Agreement with their independent attorney before signing this Agreement, that each Party has carefully read and fully understands all of the provisions of this Agreement, and that each Party is voluntarily, and without fraud, duress, or undue influence, entering into this Agreement.

PLAINTIFF AND PLAINTIFF'S COUNSEL

Dated: Feb. 6, 2023

Rita Moisson

Rita Moisson (Feb 6, 2023 09:42 PST)

Rita Moisson, an individual

Approved as to Form:

Dated: Feb. 6, 2023

THE GUHA LAW FIRM

By: 

Ronojoy Guha
PAGA Counsel

DEFENDANTS AND DEFENDANTS' COUNSEL

Dated: Feb. ___, 2023

BRIO CLINICAL, A WYOMING
CORPORATION

By: _____

Vincenzo Sorrentino, President

Dated: February ___, 2023

Vincenzo Sorrentino

Approved as to Form:

Dated: February____, 2023

EPPORT, RICHMAN & ROBBINS, LLP

By: _____

Laura E. McSwiggin
Kimia Sehati
Attorneys for Defendants