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Attorneys for Plaintiff JESSICA MALDONADO, individually, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JESSICA MALDONADO, individually, and
on behalf of other members of the general
public similarly situated

Plaintiff

v.

RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC., a
California Corporation; RADY
CHILDREN'S HOSPITAL-SAN DIEGO, a
California Corporation; RADY
CHILDREN'S HOSPITAL AND HEALTH
CENTER, a California Corporation; and
DOES 1-10, inclusive.

Defendants

CASE NO. 37-2021-00014090-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF GOOD
FAITH DETERMINATION OF CLASS
ACTION SETTLEMENT**

Date: August 26, 2022
Time: 9:00 a.m.
Dept: C-73
Judge: Hon. Joel R. Wohlfeil

1 I, Eric K. Yaeckel, hereby declare as follows:

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

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

10 **Background and Investigation**

11 3. On March 30, 2021, Plaintiff Maldonado filed the Complaint in this matter. The original
12 Complaint alleged class action claims, under the California Labor code involving, inter alia,
13 (1) Meal and rest period violations; (2) Minimum wage violations; (3) Overtime violations;
14 (4) Wage statement violations; (5) Failure to reimburse business expenses; and (6) Failure to
15 pay wages upon separation.

16 4. On April 6, 2021, Plaintiff filed a First Amended Complaint, which added representative
17 California Private Attorney General Act ("PAGA") claims were based on same underlying
18 Labor Code violations in the original Complaint.

19 5. On September 15, 2021, Plaintiff filed a Second Amended Complaint, that provided further
20 specificity on the claims at issue. The Second Amended Complaint is the operative pleading
21 for purposes of this proposed settlement.

22 6. On May 5, 2021, Plaintiff propounded discovery requests on Defendants, including requests
23 for admission, special interrogatories, requests for production of documents, and general and
24 employment form interrogatories. Through these requests, Plaintiff sought, among other
25 information and documents, the identities of putative class members, Defendants'
26 compensation policies, meal and rest period policies, employee handbooks, wage statements,
27 payroll records, time records, job descriptions, and reimbursement policies.
28

- 1 7. Defendants provided discovery responses, documents, and objections to Plaintiff's requests.
2 After a lengthy meet and confer processes and several Motions to Compel (including motions
3 filed by both Parties), Defendants produced, *inter alia*, Plaintiff's time and wage records,
4 copies of the relevant employee handbooks, copies of all other relevant employee policies, the
5 contents of Plaintiff's employee file, Plaintiff's time records, and itemized wage statements.
6 Defendant also propounded several sets of written discovery on Plaintiff. In total it appears
7 there were at least 24 sets of written discovery exchanged between the parties.
- 8 8. Defendant through its counsel, reached out early during the course of the litigation to attempt
9 to explore early resolution of this matter. As part of the settlement discussions, Defendants
10 agreed to voluntarily produce and verify thousands of pages of documents. The production
11 included all relevant policies and procedures. It also included large electronic sampling of other
12 class members' time and wage data.
- 13 9. Plaintiff also requested Defendants provide additional informal discovery so that the parties
14 could experience a meaningful mediation. Defendants provided informal discovery which
15 consisted of, *inter alia*, the number of current and former employees who worked for
16 Defendant during the limitations period, meal and rest period premiums paid, pay periods at
17 issue, a redacted sampling of employee time records and wage statements, as well as
18 confirmation that various policies and agreements were standard as to the class.
- 19 10. On June 2, 2022, the Parties attended a full day mediation before the experienced "wage and
20 hour" mediator, Lisa Klerman. Prior to, and during, the mediation, counsel for both parties
21 agreed to the informal exchange of information pertinent to a class-wide settlement. Prior to
22 mediation both parties prepared and exchanged detailed mediation briefs. Plaintiffs brief
23 contained a breakdown of potential damages based on all of the information obtained.
24 Defendants' brief outlined its defenses to both class certification and liability. At the conclusion
25 of mediation, the parties agreed on the key terms of a settlement that would globally resolve
26 all class and representative wage and hour claims asserted in the operative Complaint in this
27 Action. A true and correct copy of the Joint Stipulation of Settlement (the "Agreement") is
28

1 attached as **Exhibit A**.

2 **Terms of the Agreement**

- 3 11. The parties agreed to use CAC Services, LLC, as the “Settlement Administrator” for purposes
4 of providing the Notice to Settlement Class Members, issuing payments pursuant to the
5 Agreement, and to administer the claims. CAC’s sole business has been the administration of
6 class action settlements and class action notices, an area in which it has extensive experience.
- 7 12. Class Members will be entitled to an average share of approximately **\$325.78**. I calculated this
8 number by taking the total settlement amount, subtracting all contingent costs as proposed on
9 page one of the memorandum, and dividing by the estimate of 7,500 Class Members. This is
10 an estimate only as the actual share will depend on the amount of pay periods they were
11 employed during the limitations period.
- 12 13. A true and correct copy of the parties agreed upon Class Notice is attached as **Exhibit B**.
- 13 14. The class representative enhancement awards were decided pursuant to good faith negotiations
14 and is intended to recognize that it was the class representatives who initiated the lawsuit,
15 initiated the PAGA claims, provided critical documents and witnesses to her attorneys, and
16 worked with her attorney to propound and prepare written discovery, all in an effort to obtain
17 moneys allegedly owed not only to herself, but to hundreds of other employees

18 **Claims Analysis and Potential Recovery**

- 19 15. Our office submits this settlement provides class members with a guaranteed recovery of a
20 large portion of their “potential” damages as set forth below. As set forth above, the “average”
21 recovery (before taxes) will be approximately **\$325.78** per class member.
- 22 16. Based on the damage calculations and relevant case law below, my office submits the likely
23 “best case” recovery for an average class member would have been approximately 844.47. A
24 “worst case” scenario (in the event of a denial of class certification or a defense verdict) would
25 have been a **zero dollar** recovery.
- 26 17. As part of our analysis I also have to consider the fact that Defendants were willing to stipulate
27 to class certification on all claims as a result of the settlement, ensuring a monetary recovery
28

to all participating class members. Accordingly, I believe that warrants a further reduction from any potential maximum recovery.

Damage Calculations

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

Unpaid Compensation Violations: \$41.00 (average hourly rate) x 3,900 (number of employee positions) x 3.0 (years at issue in limitations period) x 1.8 (approximate unpaid hours per year) = \$863,460

Meal Period Policy Violations: \$41.00 (average hourly rate) x 3,900 (number of employee positions) x 3.0 (years at issue in limitations period) x 7 (approximate meal period violations per employee in a year) = \$3,357,900

Rest Period Policy Violations: \$41.00 (average hourly rate) x 3,900 (number of employee positions) x 3.0 (years at issue in limitations period) x 5 (approximate rest period violations per employee in a year) = \$2,398,500.00.

Labor Code § 226 Penalties: 3,900 (number of employee positions) x \$50 (per violation) x 36 (pay periods in one year limitations period) x .40 (approximate rate of violations per pay period) = \$2,808,000.00.

Labor Code §2802 Penalties: 7,500 (total number of employees) x \$10 (estimated average amount of reimbursement due per employee) = \$75,000.00

Labor Code § 203 Penalties: \$41.00 (average hourly rate) x 6.0 (hours, per day) x 30 (days, per Labor Code section 203) x 2,300 (number of former employees) = \$16,974,000.00.

“PAGA” Violations: 6 (separate Labor Code violations based on the above claims) x 3,900 (number of employee positions) x \$50 (per violation) x 36 (pay periods in one year limitations period) = \$42,120,000.00. The aggrieved employees are only entitled to a 25% share of this amount, which is \$10,530,000.00.

19. Based on the above, a best case recovery (which would be admittedly highly unlikely, given

the factors set forth below) would be a total judgment of \$37,006,860.00.

Relevant Case Law Supports a Further Reduction on any Recovery

20. It is my opinion that it would be *highly* unlikely to ever be awarded any amount approaching the maximum damages set forth above. To wit, the majority of the damages above are “derivative” penalties under PAGA, Labor Code § 203 and Labor Code § 226.
21. Please see the analysis of the relevant caselaw cited in the memorandum (pp. 12-13) which allows significant mitigation of PAGA penalties, which prohibits stacking of multiple penalties for the same underlying conduct and declines to automatically award §§ 203 and 226 penalties for meal and rest break violations without a further evidentiary showing.
22. Our office believes a mitigation of the damages and potential PAGA penalties would be warranted here. Defendants immediately stepped up to discuss early resolution. Defendants also committed to make changes to the challenged timekeeping and meal and rest period policies after receiving notice of this lawsuit. Also, as in the *Carrington* case (which was handled by this office), there is evidence that Defendant attempted to provide meal and rest periods *in practice*, even where the breaks were missed. Given this, it is likely that any violations by Defendant were not “willful.” Finally, given the defenses raised by Defendant to maintaining this matter as a class or representative action, there was a significant risk that many of the claims would not have even been able to survive to a trial.
23. As to the ex-employee claim pursuant to Labor Code § 203, the parties agree the failure to pay “ex-employees” claim is derivative of the other claims. As Defendants are able to assert a “good faith dispute” for withholding any unpaid wages, it would be difficult to establish any liability for a “willful” failure to pay wages owed.
24. Given my experience, I believe it would be likely that PAGA penalties would be reduced to approximately \$5 a violation, and the Court would decline to impose Labor Code § 203 and Labor Code § 226 penalties.
25. If this happened, the realistic anticipated “best case” judgment following trial would be approximately \$10,555,860. Discounting 40% for contingent costs (fees and costs award,

enhancement bonus, administration, etc.), the average class member's share of this recovery would be \$844.47 (\$6,333,516 divided by 7,500 class members). Given our office's analysis, I submit this number is the most likely "best case" recovery per class member. Given all the risks on each claim the estimated \$325.78 average recovery secured via this settlement, is a reasonable compromise and is in the best interests of the class given all the risks of continued litigation.

Analysis of Risk on Each Potential Claim

26. Each of the primary claims also had risks to obtaining both class certification and liability. If Defendant's asserted defenses were successful, the class would not receive anything.
27. Plaintiffs' unpaid wages (and unpaid overtime) claims were based on the allegation that employees were performing unpaid work (1) due to the RADY standard timekeeping system which "rounded" employee time entries and (2) caused other losses due to certain alleged "transitional math errors" caused by the payroll system. Plaintiffs alleged this resulted in regular time and overtime pay being owed where Defendants were on notice of work being performed without pay. Defendants argued that rounding of total hours worked has been recognized under California law. Defendants also denied that any unpaid work occurred, and even if some did occur, RADY claimed it was not on notice of these alleged Labor Code violations and had a strict written prohibition against off-the-clock work and a mandate that all time worked must be accurately recorded. RADY asserted proof of these alleged violations would require individualized inquiries, which could preclude class certification and make any PAGA claims unmanageable.
28. As to meal and rest period claims, Plaintiffs were able to identify hundreds of examples of missing or late meal periods without the provision of a meal period penalty payment. However, Defendants argued that these records do not conclusively show whether (1) RADY actually failed to provide the meal period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. Additionally, in light of RADY's written meal period policy and the wide

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

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

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

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

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

1
2 **Certification of the Proposed Settlement Class is Appropriate**

- 3 33. Here, Defendant's records show that approximately **7,500 class members** worked for the
4 company during the limitations period.
- 5 34. Here, for purposes of the Settlement, the parties agree the claims of Class Members all involve
6 the same questions of law and fact. (See Ex. A at ¶ 39). Namely, all class members were
7 subject to the same employment policies and practices of Defendant.
- 8 35. The proposed class representatives have no adverse interests to the class. Plaintiffs are paid
9 based on the same formula as other class members and have claims substantially the same as
10 all the other Class Members.
- 11 36. Additionally, any Class Member who wishes to "opt out" of the Settlement may do so and
12 retain all of their individual rights. Therefore there is no conflict of interest between the Class
13 Representatives and the Class Members. Thus, at least for settlement purposes, we submit the
14 adequacy prong is met.
- 15 37. Given that there are 7,500 individuals, it would be preferable to resolve all of the Class
16 Members' claims by means of a class-wide settlement than to require each Class Member to
17 litigate his or her individual claims.
- 18 38. When negotiating the settlement, both sides took into account the strengths and weaknesses
19 of their opponent's positions as pointed out by Lisa Klerman, the data available to evaluate
20 liability and damages, the lack of data or evidence on certain issues, and the substantial and
21 evolving law applicable to the merits of the claims. The Agreement was only agreed to after
22 extensive arms-length negotiations resulting in a unique compromise that permits all parties
23 to move forward and bring this action to close. In spite of a mutual desire to resolve this
24 action, the negotiations remained at all times adversarial.
- 25 39. I believe this settlement is in the best interest of the class as it provides **(1)** a guaranteed
26 favorable result; **(2)** guaranteed monetary recovery over a reasonably short period of time, as
27 opposed to possibly waiting additional years for a potentially worse result; and **(3)** significant
28

savings in attorneys' fees and costs, which would have increased had the case progressed through trial and possible appeals.

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

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

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

43. Our office had not filed a Motion for Class Certification at the time settlement was reached. Defendants presented multiple different defenses to certification during mediation and throughout litigation. Even assuming Plaintiffs did obtain class certification of the claims, each claim is subject to substantial risk of a Defense verdict at trial.

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

45. Our office has considerable experience in wage and hour and class action litigation. Trial Attorney, William Sullivan has over 28 years of experience, 27 years of which has been

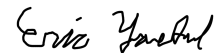
1 devoted to both prosecuting and defending class action litigation. I have over 11 years of
2 experience all of which have been dedicated primarily to class action and representative action
3 (PAGA) litigation. I am aware counsel for Defendant also has extensive experience handling
4 class action and representative action litigation.

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

9 47. Based on this experience, we also believe the \$200,000 allocation towards the PAGA claims
10 is a fair, reasonable, and adequate allocation, especially given the risks of mitigation identified
11 above.

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

16 I declare under penalty of perjury under the laws of the State of California that the foregoing
17 is true and correct. Executed this 27th day of July, 2022 at San Diego, California.

18 

19
20 _____
ERIC K. YAECKEL

EXHIBIT A

LEWIS BRISBOIS BISGAARD & SMITH LLP

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

JESSICA MALDONADO, individually, and
on behalf of other members of the general
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Plaintiff,

vs.

RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC., a
California Corporation; RADY CHILDREN'S
HOSPITAL-SAN DIEGO, a California
Corporation; RADY CHILDREN'S
HOSPITAL AND HEALTH CENTER, a
California Corporation; and DOES 1-10,
inclusive.

Defendants.

CASE No. 37-2021-00014090-CU-OE-CTL

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

[Assigned for all purposes to: Hon. Joel R.
Wohlfeil, Dept. C-73]

Action Filed:

March 30, 2021

Trial Date:

December 2, 2022

1
2 **JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT**
3 **AND RELEASE**

4 This Joint Stipulation of Class and PAGA Action Settlement and Release (“Agreement” or
5 “Settlement Agreement”) is made and entered into by and between JESSICA MALDONADO and
6 VALENCIA PLOOY, (“Plaintiff” “Claimant” or jointly “Class Representatives”), as an individuals
7 and on behalf of all others similarly situated, and RADY CHILDREN’S PHYSICIAN
8 MANAGEMENT SERVICES, INC.; RADY CHILDREN’S HOSPITAL-SAN DIEGO; and RADY
9 CHILDREN’S HOSPITAL AND HEALTH CENTER, (“Defendants”) (collectively, the “Parties”).
10 In consideration of the promises and mutual covenants and agreements herein contained, the Parties
11 hereby covenant and agree as follows:

12 **RECITALS**

13 1. On March 30, 2021, Plaintiff Maldonado initiated this putative class action by filing
14 a Complaint in the California Superior Court for the County of San Diego, Case No. 37-2021-
15 00014090-CU-OE-CTL (the “Action”). The action is currently proceeding on Plaintiff’s Second
16 Amended Complaint, which asserts a claim under the California Labor Code’s Private Attorneys
17 General Act of 2004 (“PAGA”), Lab. Code, § 2698, *et seq.* (the “Operative Complaint”), based on
18 allegations that Defendants violated certain requirements of California wage and hour law, including
19 but not limited to: (1) failure to pay minimum wages; (2) failure to pay off-the-clock wages; (3)
20 failure to pay proper overtime compensation; (4) failure to provide meal breaks; (5) failure to
21 provide rest breaks; (6) failure to reimburse employees for necessary business expenses; (7) failure
22 to provide accurate itemized wage statements; and (8) failure to pay all wages to upon termination.

23 2. Valencia Plooy came forward as a Claimant prior to the parties agreeing to attend
24 global mediation, but was not added as a named Plaintiff.

25 3. Defendants deny all material allegations set forth in the Operative Complaint and
26 as alleged by Claimant Plooy this Action and has asserted numerous affirmative defenses.

27 4. The Parties have investigated the facts and analyzed the relevant legal issues with
28 regard to the claims and defenses in the Action. Class Representatives’ Counsel’s investigation

1 included, *inter alia*, the exchange of information pursuant to informal discovery methods,
2 including: comprehensive review of timekeeping and payroll records of a sampling of data from
3 the putative class; the number of pay periods and Pay Periods included in the class; and a review
4 of Defendants' corporate wage and hour policies and practices. Based on their investigation and
5 analysis, Class Representatives believes the Action has merit, while Defendants believe the Action
6 has no merit.

7 5. On June 2, 2022, the Parties participated in mediation before Lisa Klerman, Esq.
8 (the "Mediator"), a respected mediator for California wage and hour class actions. The settlement
9 discussions were conducted at arm's-length, and the settlement is the result of an informed and
10 detailed analysis of Defendant's potential liability of total exposure in relation to the costs and
11 risks associated with continued litigation. Based on the documents produced, as well as Class
12 Representatives' Counsel's own independent investigation and evaluation, and the Mediator's
13 efforts, Class Representatives Counsel believe that the settlement with Defendants for the
14 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
15 adequate, and is in the best interest of the putative Class Members in light of all known facts and
16 circumstances, including the risk of significant delay and uncertainty associated with litigation
17 and various defenses asserted by Defendants.

18 6. In the interest of avoiding further litigation, the Parties agree to fully and finally
19 and forever settle and dispose of all actual or potential claims by the putative Class Members.
20 This Settlement Agreement is made and entered into by and between Plaintiff, individually and
21 on behalf of all others similarly situated, Claimant, and Defendants, and is subject to the terms
22 and conditions hereof, and to the Court's approval. The Parties expressly acknowledge that this
23 Settlement Agreement is entered into solely for the purpose of compromising significantly
24 disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendants.
25 If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and
26 the Parties shall be returned to their original respective positions.

27 7. The Settlement Class includes all current and former hourly non-exempt persons
28 employed by Defendants in the State of California between February 12, 2019 through the date of

1 preliminary approval of the settlement. Defendants represents the number of putative Class
2 Members to be approximately 7,463 as of May 2022, which is the date such information was
3 provided to Class Representatives' Counsel.

4 **DEFINITIONS**

5 8. The following definitions are applicable to this Settlement Agreement. Definitions
6 contained elsewhere in this Settlement Agreement will also be effective:

7 9. "Action" means *Jessica Maldonado v. Rady Children's Physician Management*
8 *Services Inc., et al.*, filed on March 30, 2021, in San Diego County Superior Court, Case No. 37-
9 2021-00014090-CU-OE-CTL.

10 10. "Attorneys' Fees and Costs" means such award of attorneys' fees as may be
11 approved by the Court for Class Counsel's litigation and resolution of this Action, and all costs
12 incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs
13 associated with documenting the Settlement, securing the Court's approval of the Settlement,
14 administering the Settlement, obtaining entry of a Judgment terminating this Action, and expenses
15 for any experts.

16 11. "Claimant" means Valencia Plooy, who may also be referred to herein as a Class
17 Representative.

18 12. "Class Counsel" means Sullivan & Yaeckel Law Group, APC, which will seek to
19 be appointed counsel for the Settlement Class.

20 13. "Class List" means a complete list of all putative Class Members that Defendants
21 will diligently and in good faith compile from its records and provide to the Settlement
22 Administrator within fifteen (15) calendar days after the Court's Preliminary Approval of this
23 Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet
24 and will include each putative Class Member's full name; last known address; Social Security
25 Number; and dates of employment.

26 14. "Class Member(s)" or "Settlement Class" means all current and former hourly non-
27 exempt persons employed by Defendant Rady Children's Physician Management Services, Inc.;
28 Rady Children's Hospital-San Diego; and Rady Children's Hospital and Health Center, in the State

1 of California between February 12, 2019 through the date of preliminary approval of the
2 settlement.

3 15. "Class Period" means the period from February 12, 2019 through the date of
4 preliminary approval of the settlement.

5 16. "Class Representatives" means Plaintiff JESSICA MALDONADO and Claimant
6 VALENCIA PLOOY, who will seek to be appointed as a representative for the Settlement Class.

7 17. "Plaintiff" means JESSICA MALDONADO who may also be referred to herein as
8 a Class Representative.

9 18. "Class Representative Enhancement Payment" means the amount to be paid to
10 Plaintiff and Claimant in recognition of their effort and work in prosecuting the Action on behalf
11 of the putative Class Members and negotiating the Settlement, at no additional cost to Defendants
12 and subject to Court approval.

13 19. "Defendants" mean Rady Children's Physician Management Services, Inc.; Rady
14 Children's Hospital-San Diego; and Rady Children's Hospital and Health Center.

15 20. "Effective Date" means when all of the following events have occurred: (1) The
16 Stipulation for Settlement has been executed by all Parties, Class Counsel, and Defendants' Counsel;
17 (2) The Court has given preliminary approval to the Settlement; (3) The Court has held a Final
18 Settlement Approval Hearing and has entered a Final Order and Judgment, approving the
19 Settlement. It is the parties' intention that the Settlement shall be final for purposes of the Effective
20 date at the time of Final Approval, if no objections to the settlement are filed. Only in the event that
21 written objections are filed prior to the Final Settlement Approval Hearing, which are not later
22 withdrawn prior to final approval, the Effective Date shall be later of: (a) the date of final affirmance
23 on an appeal of the Judgment; the expiration of the time for a petition to review the Judgment; and,
24 if review is granted, the date of final affirmance of the Judgment following review; or (b) the date
25 of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review
26 the Judgment; or (c) if no appeal is filed, the expiration date for filing any appeal from the
27 Judgment.either (a) the date sixty (60) calendar days after the entry of Final Judgment and Order
28 Approving Settlement, if no motions for reconsideration and no appeals or other efforts to obtain

1 review have been filed, or (b) in the event a motion for reconsideration, an appeal or other effort
2 to obtain review of the Final Judgment and Order Approving Settlement, the date sixty (60) calendar
3 days after such reconsideration, appeal or review has been finally concluded and is no longer subject
4 to review, whether by appeal, petition for rehearing, petition for review or otherwise.

5 21. "Individual Settlement Payment" means each Participating Class Member's share
6 of the Net Settlement Amount, to be distributed to the Participating Class Members.

7 22. "Maximum Settlement Amount" means the maximum settlement amount of Three
8 Million Nine Hundred Thousand and Eighty Dollars (\$3,980,000.00) to be paid by Defendants in
9 full satisfaction of all claims arising from the Action, which includes all attorneys' fees, costs, the
10 enhancement award, payments pursuant to PAGA, and claims administration expenses. In no
11 event will Defendants be liable for more than the Maximum Settlement Amount, unless the
12 escalator clause, described in Paragraph 45, is triggered. No portion of the Maximum Settlement
13 Amount shall revert to Defendants. Defendants' share of any employer payroll taxes to be paid
14 in connection with the settlement (e.g. FICA, FUTA, payroll taxes, and/or any similar tax or
15 charge – collectively "Employer Taxes") shall be paid in addition to the Maximum Settlement
16 Amount. The Settlement Administrator will then be responsible for making appropriate
17 deductions, reporting obligations, and issuing the individual settlement awards.

18 23. "LWDA Payment" means the amount that the Parties have agreed to pay to the
19 California Labor and Workforce Development Agency ("LWDA") for resolution of the claims for
20 civil penalties alleged pursuant to PAGA, and which are included in the Released Claims.

21 24. "Net Settlement Amount" means the portion of the Maximum Settlement Amount
22 remaining after deduction of all attorneys' fees, costs, enhancement award, the amount attributable
23 to payments pursuant to PAGA, and claims administration expenses. The Net Settlement Amount
24 will be distributed to Participating Class Members.

25 25. "Notice of Objection" means a Participating Class Member's valid and timely
26 written objection to the Settlement Agreement. For the Notice of Objection to be valid, it must
27 include: (a) the case name and number; (b) the objector's full name, signature, address, telephone
28 number and the last four digits of the objector's Social Security number; (c) a written statement

1 of all grounds for the objection accompanied by any legal support for such objection; (d) copies
2 of any papers, briefs, or other documents upon which the objection is based; (e) the identity of the
3 objector's counsel, if the objector is represented by counsel; and (f) whether the objector wishes
4 to be heard at the Final Approval Hearing.

5 26. "Notice Packet" means the Notice of Class Action Settlement and Mailing
6 Envelope.

7 27. "Parties" means Plaintiffs and Defendants, collectively, and "Party" means either
8 Plaintiffs or Defendants.

9 28. "Participating Class Members" means all Class Members who do not submit a
10 Request for Exclusion.

11 29. "Preliminary Approval" means the Court order granting preliminary approval of
12 the Settlement Agreement.

13
14 30. "Released Claims" include all claims, debts, liabilities, demands, obligations,
15 damages, and actions or causes of action of any kind, arising under state, federal or local law,
16 whether statutory, common law, or administrative law, at any time during the Class Period, that
17 were or could have been asserted based on the factual allegations in the Operative Complaint or
18 based on any facts discovered in the course of the Action, including (without limitation), claims for
19 failure to failure to pay minimum or overtime wages, failure to provide meal and rest periods or to
20 pay meal and rest period premiums, failure to indemnify necessary business expenses, failure to pay
21 all wages due to discharged or quitting employees, failure to reimburse necessary business expenses,
22 failure to provide accurate itemized wage statements; claims under California Labor Code sections
23 201 to 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,
24 1197.1, 1198, 2698 et seq., 2802, and the Wage Orders promulgated thereunder, California Business
25 and Professions Code section 17200, et seq.; and claims for injunctive relief, punitive damages,
26 penalties of any nature (including PAGA civil penalties and statutory penalties), interest, fees, and
27 costs.

1 31. “Released Claims Period” means the period from February 12, 2019 through the
2 date where the Court preliminarily approves the settlement.

3 32. “Released Parties” means Defendants Rady Children’s Physician Management
4 Services, Inc.; Rady Children’s Hospital-San Diego; and Rady Children’s Hospital and Health
5 Center, and their past, present, and future parents, subsidiaries, divisions, affiliates, predecessors,
6 successors, and assigns, and each of their past, present, and future shareholders, owners, officers,
7 directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries,
8 beneficiaries, subrogees, executors, partners, privies, and any other individual or entity which
9 could be liable for any of the Released Claims.

10 33. “Request for Exclusion” means a timely letter submitted by a Class Member
11 indicating a request to be excluded from the settlement. The Request for Exclusion must:
12 (a) include the case name and number; (b) contain the full name, address, telephone number, and
13 the last four digits of the Social Security Number of the Class Member requesting exclusion;
14 (c) clearly state that the Class Member does not wish to be included in the settlement; (d) be signed
15 by the Class Member; (e) be returned by fax or mail to the Settlement Administrator at the
16 specified address and/or facsimile number; and (f) be postmarked or faxed on or before the
17 Response Deadline. The date of the fax or postmark on the return mailing envelope will be the
18 exclusive means to determine whether a Request for Exclusion has been timely submitted. A
19 Class Member who does not request exclusion from the settlement will be deemed a Participating
20 Class Member and will be bound by all terms of the settlement, if the settlement is granted final
21 approval by the Court.

22 34. “Response Deadline” means the deadline by which Class Members must postmark
23 to the Settlement Administrator a valid Request for Exclusion or Notice of Objection. The
24 Response Deadline will be thirty (30) calendar days from the initial mailing of the Notice Packet
25 by the Settlement Administrator, unless the 60th falls on a Sunday or Federal holiday, in which
26 case the Response Deadline will be extended to the next day on which the U.S. Postal Service is
27 open. Under no circumstances, other than circumstances described in Paragraph 57, will the
28 Settlement Administrator have the authority to extend the deadline for Class Members to submit

1 a Request for Exclusion or Notice of Objection to the Settlement.

2 35. "Settlement Administrator" means CAC Services Group, LLC or any other third-
3 party class action settlement administrator agreed to by the Parties and approved by the Court for
4 purposes of administering this Settlement pursuant to the terms of this Agreement, the Class
5 Notice, the Preliminary Approval Order, and the Judgment, including, without limitation, printing,
6 distributing, and tracking documents for this Settlement, calculating estimated amounts per Class
7 Member, tax reporting, distributing the appropriate settlement amounts, and providing necessary
8 reports and declarations, and other duties and responsibilities set forth herein to process this
9 Settlement, and as requested by the Parties. The Settlement Administrator shall agree to
10 confidentiality terms as may be required by Defendants regarding personnel and payroll data
11 provided to the Settlement Administrator and shall work with Class Counsel and Counsel for
12 Defendants to implement and administer appropriate fraud-prevention policies. The Parties each
13 represent that they do not have any financial interest in the Settlement Administrator or otherwise
14 have a relationship with the Settlement Administrator that could create a conflict of interest.

15 36. "Settlement Administration Costs" means the costs approved by the Court to be
16 paid to the Settlement Administrator for administering this Settlement. The Settlement
17 Administration Costs will be paid from the Maximum Settlement Amount, including, if necessary,
18 any such costs in excess of the amount represented by the Settlement Administrator as being the
19 maximum costs necessary to administer the settlement. The Settlement Administration Costs are
20 currently estimated to be \$30,000.00.

21 37. "Pay Periods" means the number of payroll periods worked by Class Members in
22 California during the Class Period, which shall be calculated by the Settlement Administrator
23 based on the start and end dates of each individual's employment during the Class Period as
24 maintained by Defendants. Class Members may dispute the number of Pay Periods they worked
25 during the Class Period by submitting a written Pay Periods dispute to the Settlement
26 Administrator, which should include the Class Member's (a) full name, signature, address, telephone
27 number, and the last four digits of the Class Member's Social Security number; (b) the number of Pay
28 Periods the Class Member contends is correct; and (c) any evidence supporting the Class Member's

1 contention.

2 38. "Pay Period Value" means the value of each compensable Work Week, as
3 determined by the formula set forth herein.

4 **STIPULATION OF CLASS CERTIFICATION**

5 39. The Parties stipulate to the certification of this Settlement Class for settlement
6 purposes only.

7 40. This Agreement is contingent upon preliminary and final approval by the Court,
8 and certification of the Settlement Class is only for purposes of Settlement. If, for any reason, the
9 Settlement does not become final, any certification of any Settlement Class will be vacated, and the
10 Parties will be returned to their positions with respect to the Action as if the Agreement had not been
11 entered into. Should the Settlement not become final, for whatever reason, the fact that the Parties
12 were willing to stipulate provisionally to class certification as part of the Settlement shall have no
13 bearing on, and shall not be admissible in connection with, the issue of whether a class should be
14 certified in a non-settlement context. Defendants expressly reserve the right to oppose class
15 certification and/or proactively move to deny certification should this Settlement be reversed on
16 appeal or otherwise not become final. Defendants do not consent to certification of the Settlement
17 Class or any class for any purpose other than to effectuate the Settlement of this Action.

18 **TERMS OF AGREEMENT**

19 41. NOW, THEREFORE, in consideration of the mutual covenants, promises and
20 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

21 42. Funding of the Settlement Amount. Within seven (7) calendar days after the
22 Effective Date, the Settlement Administrator will provide the Parties with an accounting of the
23 amounts to be paid by Defendants pursuant to the terms of the Settlement. Within fifteen (15)
24 calendar days of receiving the accounting of the final amounts to be paid from the Settlement
25 Administrator, Defendants will make a one-time deposit of Three Million Nine Hundred and Eighty
26 Thousand Dollars (\$3,980,000.00), plus applicable payroll taxes, for payment of all Court-approved
27 and claimed amounts from the Maximum Settlement Amount into a Qualified Settlement Account
28 to be established by the Settlement Administrator. Within five (5) business days of the funding of

1 Maximum Settlement Amount, the Settlement Administrator will issue payments to (a)
2 Participating Class Members; (b) the Labor and Workforce Development Agency (“LWDA”); (c)
3 Plaintiff; and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself
4 for Court-approved services performed in connection with the settlement.

5 43. Attorneys’ Fees and Costs. Defendants agree not to oppose or impede any
6 application or motion by Class Counsel for Attorneys’ Fees up to 33 and 1/3% of the Maximum
7 Settlement Amount, or One Million, Three Hundred and Twenty Six Thousand, Six Hundred and
8 Sixty Six Dollars and Sixty-Seven cents (\$1,326,666.67), in addition to reasonable Costs and
9 expenses of litigation not to exceed \$20,000.00 subject to Court approval. The Attorneys’ Fees
10 and Costs Award shall represent payment for all claims for Class Counsel’s attorneys’ fees and
11 costs, past and future, incurred in the Action. The Attorneys’ Fees and Costs Award shall be paid
12 from the Maximum Settlement Amount, and Defendants shall not otherwise be required to pay for
13 any portion of Plaintiff’s or the Class Members’ attorneys’ fees, costs, or expenses. The Attorneys’
14 Fees and Costs Award shall be paid to Class Counsel following the Effective Date. Any amounts
15 of attorneys’ fees and costs applied for but not awarded by the Court to Class Counsel shall revert
16 back into the Net Settlement Amount. An award by the Court of attorneys’ fees or costs that is less
17 than the amounts applied for will not be grounds for Plaintiff or Class Counsel to challenge or
18 withdraw from the Settlement.

19 44. Class Representative Enhancement Payments. In exchange for a general release of
20 all claims, and in recognition of their effort and work in prosecuting the Action on behalf of Class
21 Members and negotiating the Settlement, Defendants agree not to oppose or impede any
22 application or motion by Claimant and Plaintiff for a Class Representative Enhancement Payment
23 up to Five Thousand Dollars (\$5,000) each, subject to Court approval. The Class Representative
24 Enhancement Payments will be in addition to Plaintiffs’ Individual Settlement Payments as a
25 Participating Class Member paid pursuant to the Settlement.

26 a. **Class Members’ General Release.** The Settlement Class hereby fully and
27 finally releases and discharges the Released Parties from any and all of the
28 Released Claims that were or could be asserted in the lawsuit based upon

1 the facts alleged in the complaint (collectively with Released Claims,
2 “Plaintiff’s Released Claims”), arising or accruing through the Released
3 Claims Period. The Settlement Class’s Released Claims include, but are
4 not limited to, claims arising from or dependent on the California Labor
5 Code; the Wage Orders of the California Industrial Welfare Commission;
6 California Business and Professions Code § 17200 et seq.

- 7 b. The Settlement Administrator will issue an IRS Form 1099 for the Class
8 Representative Enhancements Payment to the Plaintiffs, and Plaintiffs shall
9 be solely and legally responsible for correctly characterizing this
10 compensation for tax purposes and for paying any taxes on the amounts
11 received. The Plaintiffs agree to indemnify and hold Defendants harmless
12 from any claim or liability for taxes, penalties, or interest arising as a result
13 of the Class Representative Enhancement Payments. No benefit, including
14 but not limited to 401K benefits, shall increase or accrue as a result of any
15 payment as a result of this Settlement. Any portion of the Class
16 Representative Enhancement Payments applied for but not awarded by the
17 Court to Plaintiffs shall be added to the Net Settlement Amount for the
18 benefit of Participating Class Members. An award by the Court of a Class
19 Representative Enhancement Payments that are less than the amount
20 applied for will not be grounds for Plaintiffs or Class Counsel to challenge
21 or withdraw from the Settlement.

22 45. Settlement Administration Costs. The Settlement Administrator will be paid for
23 the reasonable costs of administration of the Settlement and distribution of payments from the
24 Maximum Settlement Amount, which is currently estimated to be \$30,000.00. These costs, which
25 will be paid from the Maximum Settlement Amount, will include, *inter alia*, the required tax
26 reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
27 distributing the Notice Packet, calculating and distributing the Maximum Settlement Amount and
28 Attorneys’ Fees and Costs, and providing necessary reports and declarations.

1 46. Labor and Workforce Development Agency Payment. Subject to Court approval,
2 the Parties agree that the amount of Two-Hundred Thousand Dollars (\$200,000.00) from the
3 Maximum Settlement Amount will be designated for satisfaction of Plaintiff's and Class
4 Members' PAGA claims. Pursuant to PAGA, 75%, *i.e.*, One-Hundred and Fifty Thousand Dollars
5 (\$150,000.00) of this sum will be paid to the LWDA and 25%, *i.e.*, Fifty Thousand Dollars
6 (\$50,000.00), will be distributed to Participating Class Members as part of the Net Settlement
7 Amount. For purposes of this Settlement Agreement only, and not as an admission of liability
8 otherwise, the Parties stipulate that all Participating Class Members are "aggrieved employees"
9 for purposes of distributing the \$50,000.00.

10 47. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
11 Individual Settlement Payments to Participating Class Members from the Settlement Class in
12 accordance with the terms of this Agreement.

13 48. Escalator Clause. If it is later determined that the number of class members
14 increased by more than 10% than the 7,463 estimated by Defendants at the time of the Parties'
15 exchange of information for purposes of mediation, then Defendants shall increase the Total
16 Settlement Amount proportionally, (*i.e.* for an increase of eleven percent in employees, Defendants
17 shall add an extra 1% to the Settlement Amount, for a fifteen percent increase in employees
18 Defendants shall add an extra 5% to the Settlement Amount). In the alternative to adding additional
19 compensation to the settlement, Defendants shall also have the option to have the class period end
20 as of the date of the date that Defendants reported there were 7,463 estimated class members.

21 49. Non-reversionary Settlement. No portion of the Maximum Settlement Amount will
22 revert to Defendants.

23 50. Individual Settlement Payment Calculations. Individual Settlement Payments will
24 be calculated and apportioned from the Net Settlement Amount based on the number of Pay
25 Periods a Participating Class Member worked during the Class Period. Specific calculations of
26 Individual Settlement Payments will be made as follows:

27 a. The Settlement Administrator will calculate the number of Pay Periods
28 worked by each Participating Class Member ("Individual Pay Periods") during the Class Period,

1 the amount to be paid per Work Week, and the individual settlement awards to eligible
2 Participating Class Members.

3 b. Defendants' employee data will be presumed to be correct, unless a
4 particular Class Member proves otherwise to the Settlement Administrator by credible evidence.
5 All Work Week disputes will be resolved and decided by the Settlement Administrator. If the
6 dispute cannot be settled by the parties and the Administrator, the Court will have the power to
7 render a decision on all Work Week disputes which will be final and non-appealable.

8 c. The individual settlement awards will be determined by dividing the Net
9 Settlement Amount by the total number of Pay Periods for all Participating Class Members,
10 resulting in the Work Week Value, and then multiplying the Work Week Value by the number of
11 Pay Periods worked by each Participating Class Member.

12 51. Settlement Awards Do Not Trigger Additional Benefits. Defendants shall fully
13 discharge its obligations to Plaintiffs and the Participating Class Members through the remittance
14 of the Maximum Settlement Amount to the Settlement Administrator, regardless of whether the
15 checks representing individual settlement awards are actually received and/or negotiated by
16 Participating Class Members. Once Defendants have remitted the Maximum Settlement Amount
17 in accordance with this Settlement Agreement, it will be deemed to have satisfied all terms and
18 conditions under this Agreement, shall be entitled to all protections afforded to it under this
19 Settlement Agreement, and shall have no further obligations under the terms of the Agreement,
20 regardless of what occurs with respect to the further administration of the Settlement. It is
21 expressly understood and agreed that the receipt of such individual settlement awards will not
22 entitle any Participating Class Member to additional compensation or benefits under any company
23 bonus, contest or other compensation or benefit plan or agreement in place during the period
24 covered by the Settlement, nor will it entitle any Participating Class Member to any increased
25 retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent
26 of this Settlement that the individual settlement awards provided for in this Settlement are the sole
27 payments to be made by Defendants to the Participating Class Members, and that the Participating
28 Class Members are not entitled to any new or additional compensation or benefits as a result of

1 having received the individual settlement awards (notwithstanding any contrary language or
2 agreement in any benefit or compensation plan document that might have been in effect during
3 the period covered by this Settlement).

4 52. Settlement Administration Process. The Parties agree to cooperate in the
5 administration of the settlement and to make all reasonable efforts to control and minimize the
6 costs and expenses incurred in administration of the Settlement. Without prejudice to any other
7 remedies, the Settlement Administrator shall hold Defendants harmless from and against all
8 liabilities, claims, causes of action, costs, and expenses (including legal fees and expenses) arising
9 out of any failure to timely or properly compensate Participating Class Members as provided for
10 in this Agreement. No person shall have any claim against any of the Released Parties, Counsel
11 for Defendants, Plaintiff, the Class Members, Class Counsel, or the Settlement Administrator
12 based on mailings, distributions, and payments made in accordance with or pursuant to this
13 Agreement.

14 53. Delivery of the Class List. Within fifteen (15) calendar days of Preliminary
15 Approval, Defendants will provide the Class List to the Settlement Administrator. The
16 information Defendants provides to the Settlement Administrator shall be used solely to
17 administer the terms of the Agreement as described herein, shall remain confidential, and shall
18 not be disclosed to anyone, except pursuant to the express written authorization of Defendants or
19 the individual in question, by order of the Court, or to the extent necessary to fulfill the Settlement
20 Administrator's reporting obligations hereunder.

21 54. Notice by First-Class U.S. Mail. Within ten (10) calendar days of receiving the
22 Class List, the Settlement Administrator will perform an NCOA check and shall mail a Notice
23 Packet in Spanish and English to all Class Members via regular First-Class U.S. Mail, using the
24 most current, known mailing addresses identified in the Class List. There will not be a claim
25 process requirement and, as such, Class Members will not receive, nor will they be required to
26 submit a claim form to receive their individual settlements.

27 55. Confirmation of Contact Information in the Class List. Prior to mailing, the
28 Settlement Administrator will perform a search based on the National Change of Address

1 Database or any other similar services available, such as provided by Experian, for information to
2 update and correct for any known or identifiable address changes.

3 56. Time for Objections. The Class Members will then have thirty (30) days in which
4 they must postmark and send written notice to the Settlement Administrator of their decision to
5 object in writing to the Settlement.

6 57. Notice Packets. All Class Members will be mailed a Notice Packet in English by
7 the Settlement Administrator. Each Notice Packet will provide: (a) information regarding the
8 nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Settlement Class
9 definition; (d) the total number of Pay Periods each respective Class Member worked for
10 Defendants during the Class Period; (e) each Class Member's estimated Individual Settlement
11 Payment and the formula for calculating Individual Settlement Payments; (f) the dates which
12 comprise the Class Period; (g) information regarding disputing Pay Periods, Requests for
13 Exclusion, or Notice of Objections; (h) the deadlines by which the Class Member must fax or
14 postmark dispute of Pay Periods, Requests for Exclusions, or Notice of Objections to the
15 Settlement; (i) the claims to be released, as set forth herein; and (j) the date for the Final Approval
16 Hearing. For every Class Member where the Notice Packet is returned after mailing with a
17 forwarding address, the Settlement Administrator shall re-mail the Notice Packet to the
18 forwarding address. For every Class Members where the Notice Packet is returned after mailing
19 without a forwarding address, the Settlement Administrator shall perform one "skip trace" search
20 in a consumer information database comparable to Accurint in an effort to locate a current address.
21 It shall be presumed that each Class Member whose Notice Packet is not returned to the Settlement
22 Administrator as undeliverable within the 30-day notice period has actually received the Notice
23 Packet. The Response Deadline for any Settlement Class Member who is re-mailed a Notice Packet
24 shall be extended fifteen (15) calendar days from the date of the re-mailing or the original thirty
25 (30) calendar day deadline, whichever is later. If the Response Deadline for any Class Member is
26 later than the original 30-day notice period, the Settlement Administrator shall include a letter with
27 the Notice Packet advising the Class Member of the adjustment to the Response Deadline.

1 58. Disputed Information on Notice Packets. Class Members will have an opportunity
2 to dispute the information provided in their Notice Packets. To the extent Class Members dispute
3 the number of Pay Periods to which they have been credited or the amount of their Individual
4 Settlement Payment, Class Members may produce evidence to the Settlement Administrator
5 showing that such information is inaccurate. Absent evidence rebutting Defendants' records,
6 Defendants' records will be presumed determinative. However, if a Class Member produces
7 evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member
8 and the Settlement Administrator will make the final decision as to the number of eligible Pay
9 Periods that should be applied and/or the Individual Settlement Payment to which the Class
10 Member may be entitled. Class Members shall have until the Response Deadline to provide
11 evidence to the Settlement Administrator demonstrating that the number of Pay Periods to which
12 they have been credited is incorrect.

13 59. Settlement Checks. The expiration date on the settlement checks will be one
14 hundred and eighty (180) calendar days from the date the settlement checks are issued. If a
15 Participating Class Member or PAGA Member does not cash his or her check within 180 days, the
16 check will be cancelled. Pursuant to California Code of Civil Procedure Section 384, all funds
17 associated with such cancelled checks will be transmitted to Children's Legal Services of San
18 Diego . The Parties each represent that they do not have any significant affiliation or involvement
19 with the proposed cy pres recipient. The Settlement Administrator may, as necessary, undertake
20 amended and/or supplemental tax filings and reporting, required under applicable local, state, and
21 federal tax laws, that are necessitated due to the cancellation of any Individual Settlement Payment
22 checks. To the extent that the Settlement Administrator is able to obtain or receive the return or
23 refund of the amounts that were transmitted to taxing authorities for the employer's and employees'
24 share of taxes, contributions, and/or withholding associated with cancelled Individual Settlement
25 Payments, all such amounts shall also be transmitted to Children's Legal Services of San Diego .
26 Settlement Class Members whose Individual Settlement Payment checks are cancelled shall,
27 nevertheless, be bound by this Settlement Agreement.

1 60. Request for Exclusion Procedures. Any Class Member wishing to be excluded
2 from the Settlement Agreement must sign and postmark or fax a written Request for Exclusion to
3 the Settlement Administrator within the Response Deadline. The date of fax or the postmark on
4 the return mailing envelope will be the exclusive means to determine whether a Request for
5 Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the
6 Settlement Administrator, who will certify jointly to Class Counsel and Defendants' Counsel the
7 Requests for Exclusion that were timely submitted. Any Class Member who submits a Request
8 for Exclusion is prohibited from making any objection to the Settlement Agreement.

9 61. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any
10 Class Member who does not affirmatively Request Exclusion of the Settlement Agreement by
11 submitting a timely and valid Request for Exclusion will be bound by all of its terms, including
12 those pertaining to the Released Claims, as well as any Judgment that may be entered by the Court
13 if it grants final approval to the Settlement. The entry of a final order approving settlement of this
14 Action and Judgment which discharges Defendants and Released Parties from liability for any and
15 all of the Released Claims shall have a *res judicata* effect and bar Plaintiff and Class Members
16 who did not submit a timely and valid Request for Exclusion from bringing any actions or claims
17 asserting the Released Claims.

18 62. Individuals who fall within the definition of the Class may choose to opt-out of the
19 Class under such procedures specified in Section III, Paragraph 11(c)(iv) of this Agreement. Any
20 such persons who opt-out of the Class ("Opt-Outs") will not receive an Individual Class Payment.
21 However, Aggrieved Employees may not opt-out of the portion of the Settlement relating to the
22 settlement of claims under PAGA. Even if a Class Member opts-out, they will still receive an
23 Individual PAGA Payment if their employment falls within the one year PAGA period. Aggrieved
24 Employees will be bound by the PAGA portion of the release whether or not they cash this check
25 before it becomes void. Class Members who opt-out will only be bound by the release of the
26 PAGA claims.

27 63. Written Objection Procedures. To object to the Settlement Agreement in writing,
28 a Class Member must postmark a valid Notice of Objection to the Settlement Administrator on or

1 before the Response Deadline. The Notice of Objection must be signed by the Class Member and
2 contain all information required by this Settlement Agreement. The postmark date will be deemed
3 the exclusive means for determining that the Notice of Objection is timely. Absent good cause
4 found by the Court, Class Members who fail to object in writing will be deemed to have waived
5 all written objections to the Settlement, and will be foreclosed from making written objections
6 and seeking any adjudication or review of such written objections, whether by appeal or otherwise,
7 to the Settlement Agreement. Aside from these procedures governing written objections, the
8 Court will otherwise control the acceptance of any objections prior to, or made at the final
9 approval hearing. Moreover, Class Members are not required to make written objections, and can
10 also make any other objections directly to the Court, at the Final Approval Hearing. At no time
11 will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to
12 submit written objections to the Settlement Agreement or appeal from the Order and Judgment.
13 Class Counsel will not represent any Class Members with respect to any such objections to this
14 Settlement.

15 64. Certification Reports Regarding Individual Settlement Payment Calculations. The
16 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report
17 which certifies: (a) the number of Participating Class Members from the Settlement Class who
18 have submitted a dispute of Pay Periods; (b) the number of Class Members who have submitted
19 valid Requests for Exclusion or Notice of Objections; and (c) whether any Class Member has
20 submitted a challenge to any information contained in their Notice Packet. Additionally, the
21 Settlement Administrator will provide to counsel for both Parties any updated reports regarding
22 the administration of the Settlement Agreement as needed or requested.

23 65. Payroll Taxes. In accordance with this Settlement, the transfer of the Gross
24 Settlement approved by the Court shall, to the fullest extent possible, resolve, satisfy and
25 completely extinguish all of Defendants' liability with respect to the Settlement Class except that
26 Defendants shall solely be responsible for the employer portion of the payroll taxes. Upon the
27 transfer of funds to the Settlement Administrator, Defendants shall have no further payment or
28

1 defense obligation whatsoever with respect to any claims covered by this Settlement made or
2 asserted by any person or entity anywhere in the world in connection with the Settlement Class.

3 66. Certification of Completion. Upon completion of administration of the Settlement,
4 the Settlement Administrator will provide a written declaration under oath to certify such
5 completion to the Court and counsel for all Parties. Plaintiff and Class Counsel will file a
6 Satisfaction of Judgment within ten (10) calendar days of the submission of said declaration.

7 67. Treatment of Individual Settlement Payments. All Individual Settlement Payments
8 will be allocated as follows: 25% of each Individual Settlement Payment will be allocated as
9 alleged unpaid wages, and 75% will be allocated as alleged unpaid interest and penalties. The
10 portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
11 interest and penalties will be reported on an IRS Form-1099 by the Settlement Administrator.

12 68. Administration of Taxes by the Settlement Administrator. The Settlement
13 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
14 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant
15 to this Agreement. The Settlement Administrator will also be responsible for forwarding all
16 payroll taxes and penalties to the appropriate government authorities.

17 69. Tax Liability. Defendants make no representation as to the tax treatment or legal
18 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not
19 relying on any statement, representation, or calculation by Defendants or by the Administrator in
20 this regard. Plaintiff and Participating Class Members understand and agree that except for
21 Defendants' payment of the employer's portion of any payroll taxes, they will be solely
22 responsible for the payment of any taxes and penalties assessed on the payments described herein.

23 70. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
24 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO
25 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
26 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
27 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
28 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS

1 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
2 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
3 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
4 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
5 EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
6 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
7 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
8 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
9 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
10 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
11 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
12 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
13 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
14 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
15 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
16 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
17 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
18 AGREEMENT.

19 71. No Prior Assignments. The Parties and their counsel represent, covenant, and
20 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
21 to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
22 action, cause of action or right herein released and discharged.

23 72. Release of Claims by Class Members. Upon the date upon which Defendants
24 transfer the Maximum Settlement Amount to the Settlement Administrator, Plaintiff and all Class
25 Members who do not Request Exclusion will be deemed to have fully, finally and forever released,
26 settled, compromised, relinquished, and discharged with respect to all of the Released Parties for
27 any and all Released Claims that accrued during the Released Claims Period. The release of
28 Released Claims will have a *res judicata* effect against any Class Members who make a claim

1 against any of the Released Parties for any of the Released claims, file any actions, claims,
2 complaints or proceedings regarding the Released Claims with the California Division of Labor
3 Standards Enforcement, initiate any other proceedings against any of the Released Parties
4 regarding any of the Released Claims, or seek to participate in any judgment or settlement of
5 claims that are the subject of the Released Claims in any other class, collective, or representative
6 action against any of the Released Parties.

7 73. Inability to Object / Opt Out of PAGA. The Parties agree that there is no statutory
8 right for any Class Member to object to, opt out of, or otherwise exclude himself or herself from the
9 settlement of the PAGA claims. Accordingly, any timely objection or exclusion from the Settlement
10 submitted by a Class Member shall be construed as relating only to the putative class action claims
11 and shall have no effect whatsoever on the settlement of the PAGA claims.

12 74. Duties of the Parties Prior to Court Approval. The Parties shall promptly submit
13 this Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary Approval
14 and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon
15 execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of an
16 order:

17 a. Scheduling a fairness hearing on the question of whether the proposed
18 settlement, including payment of attorneys' fees and costs, and the Class Representative's
19 enhancement payment, should be finally approved as fair, reasonable and adequate as to the
20 members of the Settlement Class;

21 b. Conditionally certifying the Settlement Class for settlement purposes only;

22 c. Approving, as to form and content, the proposed Notice of Pendency of
23 Class Action and Proposed Settlement;

24 d. Approving as to form and content the proposed Notice Packet;

25 e. Approving the manner and method for Class Members to request exclusion
26 from the Settlement as contained herein and within the Notice of Pendency of Class Action and
27 Proposed Settlement;

1 f. Directing the mailing of the Notice of Pendency of Class Action and
2 Proposed Settlement and Class Action Settlement, by first class mail to the Class Members; and

3 g. Preliminarily approving the Settlement subject only to the objections of
4 Class Members and final review by the Court.

5 75. Duties of the Parties Following Final Court Approval. Following final approval by
6 the Court of the Settlement provided for in this Settlement Agreement, Class Counsel will submit
7 a proposed final order of approval and judgment:

8 a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable
9 and adequate, and directing consummation of its terms and provisions;

10 b. Approving Class Counsel's application for an award of attorneys' fees and
11 costs;

12 c. Approving the Class Representative Enhancement Payment to the Class
13 Representative;

14 d. Setting a date when the Parties shall report to the court the total amount that
15 was actually paid to the Class Members; and

16 e. Entering judgment in this Action encompassing Defendants and all
17 members of the Settlement Class, with a reservation of continuing jurisdiction by the Court over
18 the Settlement Agreement and its implementation.

19 f. Posting the judgment on the Settlement Administrator's website for at least
20 90 days after entry by the Court.

21 76. Nullification of Settlement Agreement. In the event that the Settlement is barred
22 by operation of law, or invalidated, or ordered not to be carried out by a court of competent
23 jurisdiction, this Settlement Agreement, and any documents generated to bring it into effect, will
24 be null and void. Any order of judgment entered by the Court in furtherance of this Settlement
25 Agreement will likewise be treated as void from the beginning, and all Parties to this Agreement
26 shall stand in the same position, without prejudice, as if the Agreement had been neither entered
27 into nor filed with the Court. Defendants will cease to have any obligation to pay any portion of
28 the Maximum Settlement Amount to the Qualified Settlement Account, or any other party under

1 the terms of this Agreement and all previous disbursements made from Defendants to the
2 Qualified Settlement Account will immediately revert back to Defendants. Any Settlement
3 Administration Costs incurred will be split equally between the Parties.

4 77. Rescission of Settlement Agreement (by Defendants). If more than fifteen percent
5 (15%) of the Class Members opt out of the Settlement, Defendants may, at their election, rescind
6 the Settlement and all actions taken in furtherance of it will thereby be null and void. Defendants
7 must exercise this right of rescission, in writing, to Class Counsel and with a copy to the Settlement
8 Administrator within ten (10) business days after the Settlement Administrator notifies the Parties
9 of a greater than fifteen percent (15%) opt-out rate. If the option to rescind is exercised, then
10 Defendants shall be solely responsible for all costs of the claims administration accrued to that point,
11 not to exceed the amount approved by the Court in the Preliminary Approval Order. If Defendants
12 exercise this option, the Parties shall return to their respective positions that existed before the
13 execution of this Agreement, and no term of this Agreement or any draft thereof, or the negotiation,
14 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect
15 or be admissible as evidence for any purpose in the Action, or in any other proceeding.

16 78. Termination of Settlement. Either Party may terminate this Settlement only if the
17 Court declines to enter the Preliminary Approval Order, the Final Approval Order or final
18 judgment in substantially the form submitted by the Parties, or the Settlement Agreement as agreed
19 does not become final because of appellate court action. However, before terminating the
20 Settlement, the parties agree to meet and confer in good faith to bring the Settlement into
21 compliance with any Court Order. Should a party thereafter still wish to terminate the settlement,
22 the terminating Party shall give to the other Party (through its counsel) written notice of its
23 decision to terminate no later than ten (10) calendar days after receiving notice that one of the
24 enumerated events has occurred. Termination shall have the following effects:

- 25 a. The Settlement Agreement shall be terminated and shall have no force or
26 effect, and no Party shall be bound by any of its terms;
27 b. In the event the Settlement is terminated, Defendants shall have no obligation
28 to make any payments to any party, Class Member or attorney, except that

1 the terminating Party shall pay the Settlement Administrator for services
2 rendered up to the date the Settlement Administrator is notified that the
3 settlement has been terminated;

4 c. The Preliminary Approval Order, Final Approval Order and Judgment,
5 including any order of class certification, shall be vacated;

6 d. The Settlement Agreement and all negotiations, statements and proceedings
7 relating thereto shall be without prejudice to the rights of any of the Parties,
8 all of whom shall be restored to their respective positions in the Action prior
9 to the settlement;

10 e. Neither this Stipulated Settlement, nor any ancillary documents, actions,
11 statements or filings in furtherance of settlement (including all matters
12 associated with the mediation) shall be admissible or offered into evidence in
13 the Action or any other action for any purpose whatsoever.

14 79. Public Statements. Plaintiffs and Class Counsel shall not hold any press
15 conferences or issue any press releases with respect to this Settlement at any time. Until the
16 Parties submit a request for preliminary approval from the Court, Plaintiff and Class Counsel will
17 keep the terms of this Agreement confidential. Prior to final approval of this Settlement, Plaintiff
18 and Class Counsel will not discuss this Action or the Settlement or otherwise disclose the terms
19 of this Agreement with third parties other than Class Members and the Settlement Administrator,
20 except (1) as required by the PAGA statute, (2) as necessary to effectuate this Agreement, and (3)
21 to the Parties' tax advisors. After final approval of this Settlement, Plaintiff, Defendants, and their
22 respective counsel shall not issue any public statements with respect to the Action or Settlement,
23 except as required by law. The Parties and their counsel shall not engage in any publicity,
24 including website or social media postings, of any type related to the Action, Settlement, or
25 litigation against Defendants. Notwithstanding the specific limitations to public disclosure
26 identified herein, Class Counsel shall not be precluded from disclosing the Parties to the lawsuit
27 and the fact that the matter settled to a Court or other tribunal. Furthermore, nothing herein limits
28 Plaintiff's or any Class Member's ability to communicate with any government agency or

1 otherwise cooperate in any investigation or proceeding that may be conducted by any government
2 agency.

3 80. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
4 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
5 Judgment to the Court for its approval, pursuant to Rule 3.770 of the California Rules of Court.
6 After entry of the Judgment, the Court will have continuing jurisdiction under California Code of
7 Civil Procedure section 664.6.

8 81. Exhibits Incorporated by Reference. The terms of this Agreement include the terms
9 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
10 forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

11 82. Entire Agreement. This Settlement Agreement and any attached Exhibits
12 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written
13 or oral agreements may be deemed binding on the Parties. The Parties expressly recognize
14 California Civil Code section 1625 and California Code of Civil Procedure section 1856(a), which
15 provide that a written agreement is to be construed according to its terms and may not be varied
16 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
17 representations or terms will modify, vary or contradict the terms of this Agreement.

18 83. Amendment or Modification. This Settlement Agreement may be amended or
19 modified only by a written instrument signed by the named Parties and counsel for all Parties or
20 their successors-in-interest.

21 84. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
22 and represent they are expressly authorized by the Parties whom they represent to negotiate this
23 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
24 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
25 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
26 counsel will cooperate with each other and use their best efforts to effect the implementation of
27 the Settlement. If the Parties are unable to reach agreement on the form or content of any
28 document needed to implement the Settlement, or on any supplemental provisions that may

1 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
2 of the Court to resolve such disagreement.

3 85. Signatories. It is agreed that because the members of the Class are so numerous, it
4 is impossible or impractical to have each member of the Class execute this Settlement Agreement.
5 The Notice of Pendency of Class Action and Proposed Settlement, attached hereto as an Exhibit
6 will advise all Class Members of the binding nature of the release, and the release shall have the
7 same force and effect as if this Settlement Agreement were executed by each member of the Class.

8 86. Binding on Successors and Assigns. This Settlement Agreement will be binding
9 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
10 defined.

11 87. California Law Governs. All terms of this Settlement Agreement and Exhibits
12 hereto will be governed by and interpreted according to the laws of the State of California.

13 88. Execution and Counterparts. This Settlement Agreement is subject only to the
14 execution of all Parties. However, the Agreement may be executed in one or more counterparts.
15 All executed counterparts and each of them, including facsimile and scanned copies of the
16 signature page, will be deemed to be one and the same instrument provided that counsel for the
17 Parties will exchange among themselves original signed counterparts.

18 89. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
19 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
20 arrived at this Settlement after arm's-length negotiations and in the context of adversarial
21 litigation, taking into account all relevant factors, present and potential. The Parties further
22 acknowledge that they are each represented by competent counsel and that they have had an
23 opportunity to consult with their counsel regarding the fairness and reasonableness of this
24 Agreement. In addition, the Mediator may execute a declaration supporting the Settlement and
25 the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
26 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

27 90. Invalidity of Any Provision. Before declaring any provision of this Settlement
28 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest

1 extent possible consistent with applicable precedents so as to define all provisions of this
2 Settlement Agreement valid and enforceable.

3 91. Plaintiff's Waiver of Right to Be Excluded and Object. Plaintiff agrees to sign this
4 Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms
5 herein.

6 92. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
7 class certification for purposes of this Settlement only; and either party may appeal any court order
8 that materially alters the Settlement Agreement's terms.

9 93. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
10 dispute that has arisen between them and to avoid the burden, expense and risk of continued
11 litigation. In entering into this Agreement, Defendants do not admit, and specifically denies, it
12 has violated any state, federal, or local law; violated any regulations or guidelines promulgated
13 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
14 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
15 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement,
16 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
17 as an admission or concession by Defendants of any such violations or failures to comply with
18 any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement,
19 this Agreement and its terms and provisions shall not be offered or received as evidence in any
20 action or proceeding to establish any liability or admission on the part of Defendants or to establish
21 the existence of any condition constituting a violation of, or a non-compliance with state, federal,
22 local or other applicable law.

23 94. Captions. The captions and section numbers in this Agreement are inserted for the
24 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
25 provisions of this Agreement.

26 95. Waiver. No waiver of any condition or covenant contained in this Agreement or
27 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
28

1 constitute a further waiver by such party of the same or any other condition, covenant, right or
2 remedy.

3 96. Enforcement Actions. In the event that one or more of the Parties institutes any
4 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
5 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
6 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees
7 and costs, including expert witness fees incurred in connection with any enforcement actions.

8 97. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
9 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
10 strictly against one party than another merely by virtue of the fact that it may have been prepared
11 by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
12 between the Parties, all Parties have contributed equally to the preparation of this Agreement.

13 98. Representation By Counsel. The Parties acknowledge that they have been
14 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
15 and that this Agreement has been executed with the consent and advice of counsel, and reviewed
16 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
17 Settlement Agreement.

18 99. All Terms Subject to Final Court Approval. All amounts and procedures described
19 in this Settlement Agreement herein will be subject to final Court approval.

20 100. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
21 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
22 this Settlement Agreement.

23 101. Integration Clause. This Settlement Agreement contains the entire agreement
24 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
25 or contemporaneous agreements, understandings, representations, and statements, whether oral or
26 written and whether by a party or such party's legal counsel, are merged herein. No rights
27 hereunder may be waived except in writing.

102. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Settlement and Release between Claimant, Plaintiff and Defendants as of the date(s) set forth below:

SIGNATURES - READ CAREFULLY BEFORE SIGNING

PLAINTIFF JESSICA MALDONADO
 DocuSigned by:
 Jessica Maldonado
 F0FB5FF011E447B...

Dated: 7/21/2022

Plaintiff JESSICA MALDONADO

CLAIMANT VALENCIA PLOOY

Dated:

Claimant VALENCIA PLOOY

DEFENDANTS
RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC.; RADY
CHILDREN'S HOSPITAL-SAN DIEGO; and
RADY CHILDREN'S HOSPITAL AND
HEALTH CENTER

Dated:

Chief Financial Officer

102. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Settlement and Release between Claimant, Plaintiff and Defendants as of the date(s) set forth below:

SIGNATURES - READ CAREFULLY BEFORE SIGNING

PLAINTIFF JESSICA MALDONADO

Dated: _____

Plaintiff JESSICA MALDONADO

CLAIMANT VALENCIA PLOOY

Dated: 7/19/2022



Claimant VALENCIA PLOOY

DEFENDANTS

**RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC.; RADY
CHILDREN'S HOSPITAL-SAN DIEGO; and
RADY CHILDREN'S HOSPITAL AND
HEALTH CENTER**

Dated: _____

Chief Financial Officer

102. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Settlement and Release between Claimant, Plaintiff and Defendants as of the date(s) set forth below:

SIGNATURES - READ CAREFULLY BEFORE SIGNING

PLAINTIFF JESSICA MALDONADO

Dated: _____

Plaintiff JESSICA MALDONADO

CLAIMANT VALENCIA PLOOY

Dated: _____

Claimant VALENCIA PLOOY

DEFENDANTS

**RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC.; RADY
CHILDREN'S HOSPITAL-SAN DIEGO; and
RADY CHILDREN'S HOSPITAL AND
HEALTH CENTER**

Dated: 7/21/2022



Chief Financial Officer

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APPROVED AS TO FORM

Dated: 7/21/2022

SULLIVAN & YAECKEL LAW GROUP, APC

BY: *Eric Yaeckel*

Eric K. Yaeckel, Esq.

Ryan T. Kuhn, Esq.

Attorneys for Plaintiff

JESSICA MALDONADO, individually, and
on behalf of other members of the general
public similarly situated, and VALENCIA
PLOOY, Claimant

Dated: July 21, 2022

**LEWIS BRISBOIS BISGAARD & SMITH
LLP**

BY: *Whitney J. Betts*

Marilyn Moriarty, Esq.

Whitney Betts, Esq.

Attorneys for Defendants,

RADY CHILDREN'S PHYSICIAN
MANAGEMENT SERVICES, INC.; RADY
CHILDREN'S HOSPITAL-SAN DIEGO; and
RADY CHILDREN'S HOSPITAL AND
HEALTH CENTER

EXHIBIT B

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

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

JESSICA MALDONADO, individually, and on behalf
of other members of the public similarly situated,

Plaintiff,

vs.

RADY CHILDREN'S PHYSICIAN MANAGEMENT
SERVICES, INC., a California Corporation; RADY
CHILDREN'S HOSPITAL-SAN DIEGO, a California
Corporation; RADY CHILDREN'S HOSPITAL AND
HEALTH CENTER, a California Corporation; and
DOES 1-10, inclusive,

Defendants.

CASE No. 37-2021-00014090-CU-OE-CTL
JUDGE: Honorable Joel R. Wohlfeil
DEPARTMENT: C-73

NOTICE OF CLASS ACTION SETTLEMENT

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *Jessica Maldonado v. Rady Children's Physician Management Services Inc., et al.*, Case No. 37-2021-00014090-CU-OE-CTL (the "Action").

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

You are receiving this notice by order of the Court because the records of Rady Children's Hospital—San Diego, Rady Children's Physician Management Services, and Rady Children's Hospital and Health Center (hereinafter collectively "Rady"), indicate that you are a current or former Rady employee who worked in California during the time period of February 12, 2019 to [the date of preliminary approval of the settlement] (the "Class"). As a result, **you are eligible to receive a portion of the settlement amount.**

This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the Settlement will **not** affect your employment with Rady in any way whatsoever.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

In March 2021, a Rady employee in California filed a lawsuit in which she alleged violations of California wage-and-hour laws on a class action and representative basis as to all of Rady current and former employees in California.

The Class Action alleges that the Class was not paid regular, minimum, or overtime wages or final wages upon separation from employment, as required by California law; was not provided meal and rest periods under the California Labor Code and Wage Orders; was not reimbursed for all business-related expenses; and, was not provided pay statements with information specified in the California Labor Code. The Class Action also alleges violations under the California Business and Professions Code §§ 17200 et seq. based on the foregoing state law

claims. The lawsuit also seeks penalties under California's Private Attorneys General Act ("PAGA") set forth in California Labor Code §§ 2699 et seq.

The individuals who are suing Rady is referred to in this document as "Plaintiffs." Plaintiffs' attorneys, Sullivan & Yaeckel Law Group, APC, have been litigating the Action in State Court prior to this settlement.

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

The Court has not ruled on whether Plaintiffs' allegations have any merit. However, in order to avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiffs and Rady have negotiated a settlement whereby Rady has agreed to pay up to **\$3,980,000.00** to resolve the matter. As a Class Member, you are eligible to receive a portion of this amount.

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

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All persons who were employed by and worked for Rady in California at any time during the time period of February 12, 2019 to **[the date of preliminary approval of the settlement]** (the "Class Period").

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

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

A. Rady will pay up to **Three Million Nine Hundred Eighty Thousand Dollars** (\$3,980,000.00) to settle the claims of all Class Members.

B. A claims administrator has been appointed by the Court to administer the settlement. The claims administrator will pay from the \$3,980,000.00: (1) Plaintiff's counsel's attorneys' fees, up to one-third of the settlement value (or \$1,326,666.67); (2) Plaintiff's costs of litigation, up to the amount of \$20,000.00; (3) The expenses of administering the settlement, up to the amount of \$30,000.00; (4) An enhancement award of up to \$5,000.00 (\$10,000 total) for each Plaintiff's role in pursuing the litigation; and (5) A payment of \$150,000.00 to the California Labor & Workforce Development Agency, representing 75% of the \$200,000.00 allocated to the settlement of Plaintiff's claim for civil penalties under PAGA. The remainder of the \$3,980,000.00 will be paid to the Class Members in settlement of their individual claims (the "Class Payment").

C. The Class Payment will be divided among all Class Members based on the estimated number of weeks worked for Rady in California by each Class Member. That is, the Class Payment will be divided by the number of aggregate qualified weeks worked by all Class Members during the Class Period to produce a "Weekly Settlement Value." A "qualified week" is any week in which a Class Member was employed by and worked for Rady in California during the Class Period. If you do not opt out of the settlement, you will be eligible to receive a settlement payment in the amount of the total number of qualified weeks you worked for Rady during the Class Period multiplied by the Weekly Settlement Value, less applicable withholdings.

D. Corresponding to Rady records, you worked for Rady in the State of California for approximately **[INSERT NUMBER OF pay periods]** pay periods during the Class Period, which runs from February 12, 2019 through **[the date of preliminary approval of the settlement]**.

Your portion of the Settlement Payment will be based on the above information. If you believe the information above is incorrect, you may dispute this information by sending your corrections and any supporting documentation to the Claims Administrator via U.S. Mail, at [REDACTED]. Please be advised that the information listed above is presumed to be correct unless you prove otherwise.

The estimated value of each workweek for purposes of calculating Settlement Payments to all Class Members is approximately: <<AMOUNT>>. Your settlement amount will be calculated by multiplying this amount by your number of weeks you worked for Rady during the Class Period. Your estimated settlement amount is <<AMOUNT>>. This is only an estimate. Your actual share may change depending on the Court's final ruling and the final number of participating Class Members.

E. If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release Rady and their past, present, and future parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and each of their past, present, and future shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, privies that from all claims that were or could have been asserted based on the factual allegations in the Operative Complaint or based on any facts discovered in the course of the Action, including (without limitation), claims for failure to pay minimum or overtime wages, failure to provide meal and rest periods or to pay meal and rest period premiums, failure to indemnify necessary business expenses, failure to pay all wages due to discharged or quitting employees, failure to reimburse necessary business expenses, failure to provide accurate itemized wage statements; claims under California Labor Code sections 201 to 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., 2802, and the Wage Orders promulgated thereunder, California Business and Professions Code section 17200, et seq., and claims for injunctive relief, punitive damages, penalties of any nature (including PAGA civil penalties and statutory penalties), interest, fees, and costs) for the time period from February 12, 2019 up to and including the last date of the Class Period. You will be barred from prosecuting any of the Released Class Claims against the Released Parties.

F. Please Note: Individuals who fall within the definition of the Class may choose to request exclusion or "opt-out" of the Class under such procedures specified herein. Any such persons who opt-out of the Class ("Opt-Outs") will not receive an Individual Class Payment. However, you may not opt-out of the portion of the Settlement relating to the settlement of claims under PAGA. Even if a Class Member opts-out, they will still receive an Individual PAGA Payment. You will be bound by the PAGA portion of the release whether or not you cash the check for your portion of the PAGA penalties before it becomes void. Class Members who opt-out will only be bound by the release of the PAGA claims and will retain all other rights in their individual capacity.

V. WHAT ARE MY OPTIONS?

A. ***You may accept your share of the \$3,980,000.00 settlement and be bound by the release of all claims described above.*** Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the claims administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued. After those one hundred eighty (180) days expire, the check will become void; ***or***

B. ***You may exclude yourself from the settlement, in which case you will not receive your share of the settlement and you will not be bound by the settlement.*** If you choose to be excluded, by no later than [REDACTED] (30 calendar days after mailing of this Notice), you must send a written request for exclusion, by mail, to the claims administrator, [REDACTED], located at [REDACTED]. In order to be considered valid, your request for exclusion ***must*** include your name, your address, a request for exclusion, and your signature.

C. ***You may object to the settlement.*** The procedures for objecting to the settlement are described

below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

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

B. Twenty-Five percent (25%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining seventy-five percent (75%). You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

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

VII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on [REDACTED], 2022, at [REDACTED] a.m., in Department C-73 of the San Diego County Superior Court, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. You are not required to attend the hearing. Sullivan & Yaeckel Law Group, APC (contact information below), counsel for Plaintiff and the Class, will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. Procedures for making remote appearances at the hearing are allowed, but are subject to change. However, those procedures are posted on the Court's website at:

<https://www.sdcourt.ca.gov/virtualhearings>.

You should check the Court website for up to date information before attempting to make a remote appearance.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

You have the option of objecting to the Settlement and telling the Court that you don't agree with the Settlement or some part of it. The Court will consider your views. To object, you may send a letter, which you must sign, saying that you object to the settlement of *Jessica Maldonado v. Rady Children's Physician Management Services Inc., et al.*, Case No. 37-2021-00014090-CU-OE-CTL. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number and/or your Rady employee ID number, your address, the specific reasons you object to the terms of the Settlement, and your signature. Mail the objection to the Settlement Administrator address at [REDACTED] or fax to [REDACTED] on or before [REDACTED], 2022 (30 calendar days after mailing of this Notice). A written objection is optional. You may also appear the Final Approval Hearing, as described in Section VII, above, to have any objections heard by the Court.

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any papers filed in the Action, which are on file with the Clerk of the Court, case number 37-2021-00014090-CU-OE-CTL. The pleadings and all other records from this litigation may be examined by inspecting the Court file in the at the filing department of the San Diego County Superior Court, located at Hall of Justice, 330 West Broadway, San Diego, California 92101. You may also review the settlement agreement, along with other court records regarding this case, on the Court's website, <https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>, through the link to the "Register of Actions."

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

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**PLEASE DO NOT CALL THE COURT, RADY, RADY CORPORATE OFFICE
AND MANAGERS, OR RADY ATTORNEYS REGARDING THIS
SETTLEMENT.**
