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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SAMUEL ELLIOTT, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

MED-DATA, INCORPORATED, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: RIC1901865

Honorable Sunshine S. Sykes
Department 6

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Notice of Motion and Motion for Preliminary
Approval of Class Action Settlement;
Declaration of Proposed Class Representative
(Samuel Elliott); Declaration of Proposed
Administrator (Eric Springer); Declaration of
Proposed Cy Pres Recipient (Heather Tiffiee);
Compliance Chart; and [Proposed] Order filed
concurrently herewith]

Reservation: 006997607479
Date: December 1, 2021
Time: 8:30 a.m.
Department: 6

Complaint Filed: March 13, 2019
FAC Filed: September 9, 2021
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Samuel Elliott. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and other complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost
7 exclusively focused on the prosecution of consumer and employment class actions, involving
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases
11 involving the executive, administrative, and other overtime exemptions to the State of California
12 and federal overtime compensation requirements. During this relatively short time, in association
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
14 in California.

15 **EXAMPLES OF CLASS ACTION RESULTS**

16 7. What follows are just a few examples of the type of results we have achieved on
17 behalf of our clients:

18 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class and representative action against a major property management company involving
20 allegations of misclassification of various “manager” positions. On September 20, 2010, the court
21 granted final approval of the class and representative action settlement. The Los Angeles County
22 Superior Court Case Number is BC400414.

23 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class action against a national retailer involving allegations of misclassification of the
25 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

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1 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class and representative action against a national property management company
3 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,
4 the court granted final approval of the class and representative action settlement. The Los Angeles
5 County Superior Court Case Number is BC430918.

6 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
7 and-hour class action against a national retailer involving allegations of misclassification of the
8 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
9 certification. On August 26, 2013, the court granted final approval of the class action settlement.
10 The Los Angeles County Superior Court Case Number is BC424012.

11 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a bank, involving allegations of misclassification
13 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval
14 of the class and representative action settlement. The Kern County Superior Court Case Number
15 is S-1500-CV-273194-LHB.

16 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class and representative action against a national wholesale distributor of plumbing and
18 builder supplies, involving allegations of misclassification of multiple salaried “manager”
19 positions. On May 22, 2014, the court granted final approval of the class and representative action
20 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

21 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
22 and-hour class action involving allegations of misclassification of the “Operations Manager”
23 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The
24 Los Angeles County Superior Court Case Number is BC478769.

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h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of household items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of the class and representative action settlement. The San Francisco County Superior Court Case Number is CGC-13-532344.

i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action involving allegations of misclassification of the salaried residential “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for class certification. The Los Angeles County Superior Court Case Number is BC474784.

j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of upscale hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is JCCP4794.

k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class and representative action against a national retailer of apparel and fashion accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final approval of the class and representative action settlement. The Los Angeles County Superior Court Case Number is BC488069.

l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-and-hour class action against a national retailer of apparel, accessories, and home products, involving allegations of misclassification of the “Department Manager” position. On August 12, 2016, the court granted plaintiffs’ motion for class certification in part and certified a class. The Alameda County Superior Court Case Number is RG13680477.

m) Our firm represented the plaintiff in a representative action under the Private Attorneys General Act, against a real estate and property management company, on behalf of non-exempt employees. On November 4, 2016, the Court granted approval of the settlement. The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

1 n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class action against a full-service bank, on behalf of non-exempt employees. On
3 November 18, 2016, the court granted final approval of the class action settlement. The San
4 Francisco County Superior Court Case Number is CJC-13-004839.

5 o) Our firm represented the plaintiffs in a wage-and-hour class and
6 representative action against a foodservice distributor, on behalf of non-exempt employees. On
7 January 26, 2017, the court granted final approval of the class and representative action settlement.
8 The San Bernardino County Superior Court Case Number is CIVDS1507260.

9 p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative
10 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
11 employer's motion to compel arbitration, which resulted in a published opinion by the California
12 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply*, 9
13 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme
14 Court Docket No. 17-254).

15 q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
16 and-hour class and representative action against a consumer packaging company, on behalf of non-
17 exempt employees. On March 10, 2017, the court granted final approval of the class and
18 representative action settlement. The Los Angeles County Superior Court Case Number is
19 BC590429.

20 r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
21 and-hour class action and representative action against a manufacturer of food service industry
22 supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval
23 of the class and representative action settlement. The Orange County Superior Court Case Number
24 is 30-2015-00810013-CU-OE-CXC.

25 s) Our firm represented the plaintiff in a wage-and-hour class and
26 representative action against a property management company, on behalf of non-exempt
27 employees. On June 14, 2017, the court granted final approval of the class and representative
28 action settlement. The Los Angeles County Superior Court Case Number is BC586234.

1 t) Our firm represented the plaintiffs in a wage-and-hour class action and
2 representative action against a food company on behalf of non-exempt employees. On June 30,
3 2017, the court granted final approval of the class and representative action settlement. The
4 Sacramento County Superior Court Case Number is 34-2015-00175871.

5 u) Our firm represented the plaintiffs in a wage-and-hour class action and
6 representative action against a chocolate company on behalf of non-exempt employees. On July
7 19, 2017, the court granted final approval of the class and representative action settlement. The
8 Alameda County Superior Court Case Number is RG15764300.

9 v) Our firm represented the plaintiffs in a wage-and-hour class action and
10 representative action against a manufacturer of plastic containers on behalf of non-exempt
11 employees. On October 31, 2017, the court granted final approval of the class and representative
12 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

13 w) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
14 and-hour class action and representative action against a property management company on behalf
15 of hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order
16 granting final approval of the class and representative action settlement. The Los Angeles County
17 Superior Court Case Number is JCCP 4819.

18 x) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class action and representative action against a global provider of flexible office space
20 solutions. On February 15, 2018, the court entered an order granting final approval of the class
21 and representative action settlement. The Los Angeles County Superior Court Case Number is
22 BC498401.

23 y) Our firm, in association with co-counsel, represented the plaintiff in a wage-
24 and-hour class action against a container manufacturer, on behalf of non-exempt employees. On
25 October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
26 County Superior Court Case Number is VCU264528.

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1 z) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a behavioral health service provider on behalf of non-exempt
3 employees. On November 13, 2018, the court granted final approval of the class and
4 representative action settlement. The Alameda County Superior Court Case Number is
5 RG16811450.

6 aa) Our firm, in association with co-counsel, represented the plaintiff in a
7 representative action under the Private Attorneys General Act, against a global provider of
8 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.
9 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior
10 Court Case Number is S-1500-CV-280215-SDC.

11 bb) Our firm represented the plaintiff in a wage-and-hour class action against a
12 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
13 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
14 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
15 JCCP 4886.

16 cc) Our firm, in association with co-counsel, on behalf of the plaintiff and
17 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
18 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
19 notable decision from the California Supreme Court clarifying the law and finding, in part, that
20 employer arbitration agreements are unenforceable where they block a PAGA claim from
21 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

22 dd) Our firm represented the plaintiffs in a wage-and-hour class and
23 representative action against a bank on behalf of non-exempt employees. On September 27, 2019,
24 the court granted the plaintiffs' motion for class certification in part and certified a class. The
25 Alameda County Superior Court Case Number is RG15757606 and the Judicial Council
26 Coordination Proceeding Number is JCCP 4921.

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1 ee) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a national retailer of apparel and fashion accessories, on behalf of
3 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
4 certification in part and certified a class. The Sacramento County Superior Court Case Number is
5 34-2015-00175330-CU-OE-GDS.

6 ff) Our firm represented the plaintiff in a wage-and-hour class and
7 representative action against a medical equipment supplier on behalf of non-exempt employees.
8 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified
9 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

10 gg) Our firm, in association with co-counsel, represented the plaintiff in a wage-
11 and-hour class and PAGA representative action against a large national drug testing laboratory on
12 behalf of non-exempt employees. On February 21, 2020, the court granted the plaintiff's motion
13 for class certification and certified a class. The San Diego County Superior Court Case Number
14 is 37-2018-00019611-CU-OE-CTL.

15 hh) Our firm represented the plaintiffs in a wage-and-hour class and
16 representative action against a national retailer of sportswear, footwear, and camping equipment
17 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's
18 motion for class certification and certified a class. The Riverside County Superior Court Case
19 Number is RICJCCP4930.

20 ii) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
21 representative action against a plastic packaging company on behalf of non-exempt employees.
22 On June 8, 2020, the court granted in part the plaintiffs' motion for class certification and certified
23 a class. The San Bernardino County Superior Court Case Number is CIVDS1507361.

24 jj) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
25 and-hour class action against manufacturer and supplier of power products and services on behalf
26 of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for
27 class certification and certified a class. The San Diego County Superior Court Case Number is
28 37-2015-00025968-CU-OE-CTL.

PRELIMINARY APPROVAL

8. Marked and attached hereto as “**EXHIBIT 1**” is the Class Action and PAGA Settlement Agreement (“Settlement,” “Agreement,” or “Settlement Agreement”) entered into by and between Plaintiff Samuel Elliott (“Plaintiff”), individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Med-Data, Inc. (“Defendant”), on the other hand (collectively, the “Parties”). The Parties and their counsel have approved the proposed Notice of Class Action Settlement (“Class Notice”), Objection Form, and Exclusion Form (collectively, “Notice Packet”), attached as “EXHIBIT A”, “EXHIBIT B” and “EXHIBIT C”, respectively, to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement, and respectfully request that the Court approve them as well.

9. Based on information provided by Defendant, as of August, 2020, the Class is estimated to consist of approximately four hundred thirty-nine (439) individuals.

10. The effectiveness of Lawyers *for* Justice, PC (“Class Counsel”) in prosecuting this matter has translated into tangible monetary benefits for the Class Members in the following respects: (1) Class Members recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed result that compares favorably with other similar class action settlements of this type given the strengths and weaknesses of the case; and (3) significant savings in Class Counsel’s fees and/or costs that would have only increased significantly had the case progressed through certification, trial, and/or appeals.

11. Class Counsel has litigated the case for over two years, and was actively preparing the matter for class certification and trial. The Parties have engaged in extensive settlement negotiations and participated in two formal, full-day mediations conducted by Hon. Michael Latin (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters. Prior to and during the mediations and settlement discussions, the Parties exchanged class information and engaged in an extensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication,

1 the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and
2 wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility
3 of appeals, among other things. During all settlement discussions, the Parties conducted their
4 negotiations at arm's length in an adversarial position. Arriving at a settlement that was acceptable
5 to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail
6 on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able
7 to obtain class certification and prevail at trial. After conducting investigations, informal
8 discovery, and exchange of information, extensive settlement negotiations, and with the aid of the
9 mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
10 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
11 that would attend further litigation. The Settlement is a fair, reasonable, and adequate resolution
12 of the Released Claims of Plaintiff and Settlement Class Members, against the Released Parties.

13 12. The Parties used the pre-mediation time to investigate the veracity, strength, and
14 scope of the claims, and Class Counsel was preparing the action for class certification and trial.
15 Prior to engaging in mediation, Plaintiff conducted significant investigation and informal
16 discovery regarding the facts of the case, including and not limited to, the exchange, review, and
17 analysis of thousands of pages of documents and data obtained from Defendant and other sources.
18 The volume of data and documents that Class Counsel reviewed and analyzed included and was
19 not limited to: Plaintiff's and other Class Members' employment records, a detailed sampling of
20 Class Members' time and pay data (including, but not limited to, Timecard Reports, Check
21 Vouchers, and Wage and Tax Reports), Carbon Outreach's The Guide, multiple iterations of
22 Diversified Healthcare Resources' Employee Handbook and MedData's Employee Handbook,
23 company policy acknowledgements (including, but not limited to, MedData's Employee
24 Handbook's Acknowledgement of Receipt and Review and Diversified Healthcare Resources'
25 Handbook Acknowledgement), job descriptions, Defendant's operations and employment
26 practices, forms (including, but not limited to, MedData's Meal Break Waiver – Employee Shift
27 6 Hours or Less), and policies (including, but not limited to, Carbon Outreach's Travel & Expense
28 Reimbursement Policies and Procedures, MedData's National Travel & Expense Reimbursement

1 Policies and Procedures, MedData’s Travel and Expense Policy, and Rest and Meal Breaks
2 policies), among other information and documents. Class Counsel interviewed Plaintiff and other
3 Class Members to gather facts and to identify potential witnesses. Counsel for the Parties also met
4 and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings and the
5 production of documents and data prior to the mediation. Class Counsel also drafted pleadings
6 and a mediation brief as well as a mediation memo and prepared for and attended court
7 proceedings, two (2) mediation sessions, and settlement negotiations, among other tasks.

8 13. Counsel for the Parties have also invested time researching and investigating the
9 applicable law, which is constantly evolving as it relates to certification, representative PAGA
10 claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff’s claims
11 and damages, and Defendant’s defenses thereto, as well as facts discovered. Based on our analysis,
12 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

13 14. The Settlement provides for a Settlement Sum of one million five hundred sixty-five
14 thousand dollars and no cents (\$1,565,000.00). The Net Settlement Sum is the Settlement Sum
15 less the following amounts subject to approval by the Court: Attorneys’ Fees and Costs to Class
16 Counsel, Enhancement Award to Plaintiff, Settlement Administration Costs to the Administrator,
17 and \$75,000.00 to the Labor and Workforce Development Agency (“LWDA”). Assuming that the
18 amounts allocated under the Settlement toward these payments are awarded by the Court, the Net
19 Settlement Sum is currently estimated to be eight hundred eighty-two thousand two hundred fifty
20 dollars and no cents (\$882,250.00). The Settlement Sum will be fully distributed in accordance
21 with the terms of the Settlement and there is no reversion to Defendant.

22 15. After obtaining multiple bids from multiple potential settlement administrators
23 ranging from \$10,073 to \$10,581.77, the Parties agreed to retain Simpluris, Inc. (“Simpluris” or
24 “Administrator”) to handle the notice and settlement administration. The Parties respectfully
25 request that the Court appoint Simpluris to handle these procedures and serve as the Administrator.
26 Defendant will provide Simpluris with a list of Class Members that Defendant will compile from
27 its records, which will include each Class Member’s number of weeks that they worked for
28 Defendant during the period between March 13, 2015 and August 19, 2020 (“Workweeks”) or

1 dates of employment, last known address, and Social Security number (collectively referred to as
2 the “Class List”), and Simpluris will calculate each Settlement Class Member’s estimated share of
3 the Net Settlement Sum (“Individual Settlement Share”). Simpluris will also receive requests for
4 exclusion from the Settlement, objections to the Settlement, and disputes regarding Workweeks;
5 provide necessary reports and declarations; calculate, subtract, and transmit necessary taxes and
6 withholdings; prepare and submit informational and other tax filings and documents; issue and
7 transmit all payments provided for by the Settlement, including and not limited to, mailing
8 Individual Settlement Share checks to the Settlement Class Members; and perform any other usual
9 and customary duties for administering a class action settlement. Settlement Administration Costs
10 are currently estimated not to exceed twenty-five thousand dollars and no cents (\$25,000.00) and
11 will be paid out of the Settlement Sum, subject to approval of the Court.

12 16. Based on investigation and information discovered, Class Counsel believes that
13 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
14 that Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay
15 overtime and minimum wages and associated premium pay, failed to provide compliant meal and
16 rest periods and to pay associated premium pay, failed to timely pay wages during employment
17 and upon termination of employment, failed to provide compliant wage statements, failed to
18 maintain requisite payroll records, and failed to reimburse necessary business expenses, and
19 thereby engaged in unfair business practices and conduct giving rise to penalties recoverable under
20 the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff
21 also asserted that Class Members were expected to perform similar job duties and were subject to
22 the same or similar operations and employment policies, practices, and procedures. Additionally,
23 Plaintiff asserted that Defendant’s recordkeeping practices with respect to Plaintiff and the Class
24 Members were substantially the same during the time period at issue. As a result, Plaintiff claims
25 that the Class Members, were uniformly not paid all of the compensation that was owed to them
26 by Defendant since March 13, 2015. Thus, in Class Counsel’s view, it is clear that the outcome
27 of this litigation would be determined by Defendant’s uniform operations and employment
28 practices, policies, and procedures that Plaintiff alleges applied across its hourly-paid or non-

1 exempt employees in California during the Class Period.

2 17. Class Counsel is aware of the defenses and position of Defendant, but believes that
3 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff has also taken
4 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
5 delays inherent in such litigation, including those involved in class certification and/or
6 representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish
7 liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties in
8 establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement
9 discussions, as well as the evaluations of the mediator, who is experienced and well-regarded in
10 complex labor and employment matters.

11 18. Defendant, on the other hand, denied and continues to deny any liability and
12 wrongdoing of any kind associated with the claims alleged in the lawsuit, and further denies that
13 the lawsuit is appropriate for class treatment or representative adjudication for any purpose other
14 than this Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides
15 have also had the opportunity to interview witnesses and review documents and information
16 relating to Plaintiff's and Class Members' employment with Defendant, and Defendant's
17 operations and employment policies, practices, and procedures. The Parties also reviewed and
18 analyzed thousands of pages of documents and data, including but not limited to a detailed
19 sampling of Class Members' time and pay information, to determine the potential value and
20 strength of the claims. The available information enabled Class Counsel to estimate the potential
21 claims of the Class and prepare damages/valuation models. Accordingly, the Parties have
22 conducted adequate investigation and discovery to be sufficiently informed of the nature and
23 extent of the Class Members' claims, and to enable both sides to fully evaluate the Settlement for
24 its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is well-suited
25 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and
26 risks to both sides that would attend further litigation. The Settlement takes into account the
27 strengths and weaknesses of each side's position and the uncertainty of how the case might have
28 concluded at certification, trial, and/or appeals.

1 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
2 in an amount of up to thirty-five percent (35%) of the Settlement Sum
3 (i.e., \$547,750.00) and expenses and costs in an amount not to exceed twenty-five thousand dollars
4 and no cents (\$25,000.00), which will be paid out of the Settlement Sum, subject to approval by
5 the Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation
6 and will not receive any compensation until recovery is obtained.

7 20. The Settlement Agreement provides for payment of up to ten thousand dollars and
8 no cents (\$10,000.00) to Plaintiff as an Enhancement Award to be paid out of the Settlement Sum
9 subject to approval by the Court. Plaintiff spent considerable time and effort to produce relevant
10 documents and past employment records and to provide the facts and evidence necessary to
11 attempt to prove the allegations. Plaintiff was available whenever Class Counsel needed him and
12 actively tried to obtain information that would benefit the Class. Accordingly, it is appropriate
13 and just for Plaintiff to receive an Enhancement Award, in addition to his Individual Settlement
14 Share, for his services on behalf of the Class.

5 OTHER PENDING ACTIONS

21. I made reasonable inquiry of other members at Lawyers *for* Justice, PC, and I am not aware of any other pending actions against Defendant in any other Court that the Settlement may impact.

9 **FEE SPLIT ARRANGEMENT**

20 22. Lawyers *for* Justice, PC has not entered into a fee splitting agreement or arrangement
21 with any other counsel.

22 **RELATION TO PROPOSED CY PRES RECIPIENT**

23. I made reasonable inquiry of Plaintiff and other members at Lawyers *for* Justice, PC,
and to the best of my knowledge, neither I, Plaintiff, nor other members at Lawyers *for* Justice,
PC have any relationship with the proposed *cy pres* recipient Capital Pro Bon (formerly known as
“Voluntary Legal Services Program”). See also Settlement Agreement, ¶ 7.m.

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ESTIMATED SETTLEMENT PAYMENTS TO CLASS MEMBERS

24. Based on Defendant's representations to Class Counsel on August 20, 2020, the maximum Individual Settlement Share is estimated to be six thousand seven hundred ninety-four dollars and fort-four cents (\$6,794.44), the minimum Individual Settlement Share is estimated to be twenty-six dollars and thirty-four cents(\$26.34), and the average Individual Settlement Share is estimated to be two thousand nine dollars and sixty-eight cents (\$2009.68).

ESTIMATE OF THE VALUE OF THE CLAIMS

25. Plaintiff's action alleges that Defendant has violated the California Labor Code by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiff and the putative class members, including, *inter alia*, failing to properly compensate overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages and associated waiting-time penalties, failing to provide compliant wage statements, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices under the California Business and Professions Code and owes civil penalties recoverable under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA").

26. Having evaluated hundreds of wage-and-hour class action cases, I am experienced and qualified to evaluate the claims of the putative class members and Defendant's defenses.

27. Based on data provided by Defendant prior to mediation, the total number of class members during the period from March 13, 2015 to February 28, 2020 ("relevant time period") was estimated to be four hundred thirty-nine (439) individuals and their total workweeks was estimated to be a total of thirty-three thousand five hundred one (33,501) and the average hourly rate of pay of eighteen dollars and twelve cents (\$18.12).

28. Both sides had the opportunity to interview witnesses, conducted informal discovery and investigations into the facts of the case, and informally exchanged information and class-wide data.

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A. Failure to Pay Overtime and Minimum Wages

29. Plaintiff alleged Defendant failed to pay overtime and minimum wages. Plaintiff contended that that Defendant's uniform policies, practices, and procedures required putative class members to perform work during meal periods and before clocking-in and after clocking-out. For example, Plaintiff contended that due to Defendant's strict attendance policy and practice of prohibiting employees from clocking in prior to their scheduled shift start times or clocking out after their scheduled shift end times, Plaintiff and other putative class members were regularly forced to arrive before their scheduled shift times in order to complete various tasks. Plaintiff contended that Plaintiff and other putative class members regularly spent time each day performing these job-related tasks prior to clocking in for their scheduled shifts because Defendant's policies prohibited them from clocking in more than seven (7) minutes prior to their scheduled starting times. Plaintiff also contended that similarly, employees were required to perform the above-listed tasks after clocking out from their scheduled shifts, resulting in additional off-the-clock work performed daily. Plaintiff further contended that Defendant prohibited putative class members from clocking in for their shifts from anywhere other than at their workstations, and putative class members were forced to complete various work tasks including, but not limited to, booting up and logging into their workstation computers, before they could clock in/out. Plaintiff also contended that Defendant required Plaintiff and other putative class members to complete heavy workloads and meet unreasonable demands within their scheduled work times only, and discouraged them from working overtime hours. Further, Plaintiff contended that Defendant exerted class-wide pressure on putative class members to reduce the amount of recorded overtime, requiring class members to obtain pre-approval prior to working overtime or in excess of their scheduled work hours, and subjecting those who recorded overtime without preapproval to discipline. Plaintiff also contended that Defendant incorrectly calculated the regular rate of pay for purposes of calculating overtime compensation by failing to include non-discretionary bonuses (including bonuses, spot bonuses, and referral bonuses) commissions, gift cards, incentives, rewards, and awards its regular rate calculations. Plaintiff contended that Defendant failed to properly

1 compensate Plaintiff and putative class members at their applicable minimum, regular, or overtime
2 rates for all of the hours that they worked.

3 30. California Labor Code section 510 provides that when an employee works more than
4 eight (8) hours in any workday, more than forty (40) hours in any workweek and/or more than six
5 (6) days in a workweek, the employer must pay the employee at least one and one-half times the
6 employee's regular rate of pay for all overtime hours worked. The employer must pay the
7 employee no less than twice his or her regular rate of pay for hours worked in excess of twelve
8 (12) hours in one day or in excess of eight (8) hours on the seventh consecutive day of work.
9 California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC")
10 Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate
11 of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
12 number of hours worked by the person on a daily or weekly basis.

13 31. California Labor Code section 1197 provides that it is unlawful to pay employees at
14 a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
15 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action, as
16 well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
17 thereon. California Labor Code section 1197.1 provides for civil penalties, which, arguably, may
18 only be recovered by the Labor Commissioner during a one-year statute of limitations period.

19 32. Defendant contended, *inter alia*, that its overtime policies and practices comply with
20 the law, and that it paid putative class members over the California minimum wage for all hours
21 worked. Defendant contended that it correctly calculated and paid putative class members' regular
22 rate for purposes of paying overtime. Defendant also produced wage statements reflecting
23 overtime compensation paid to many of the putative class members (including, and not limited to,
24 Plaintiff). Defendant further contended that all employees were required to record all time worked
25 and were given the opportunity to make any necessary timecard revisions or changes, and that
26 Defendant was not aware that any work had been performed off-the-clock. Defendant also argued
27 that individual liability issues predominate, including: (a) whether each employee worked off-the-
28 clock; (b) whether Defendant knew or should have known about each employee's off-the-clock

1 work; (c) whether each employee worked overtime; (d) whether Defendant knew or should have
2 known that each putative class member performed overtime work. Defendant also contended that
3 the putative class members held different job titles and had different job duties and that these
4 circumstances would raise highly individualized questions of fact and would pose challenges to
5 certification and the merits of the claims for overtime and minimum wages.

6 33. Class Counsel considered information obtained through investigations and from
7 Plaintiff and other putative class members, as well as class data provided by Defendant, and
8 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
9 be proven that Defendant failed to pay one (1) hour of overtime wages every workweek during the
10 relevant time period, the potential value of this claim was estimated to be \$ \$1,821,114.36 (33,501
11 workweeks x 2 hour of overtime wages x overtime hourly rate of \$27.18, which is based on the
12 average hourly rate of \$18.12). Assuming that it could be proven that Defendant failed to pay one
13 (1) hour of minimum wages every workweek during the relevant time period, the potential value
14 of this claim was estimated to be \$607,038.12 (33,501 workweeks x 1 hour of unpaid minimum
15 wages x average hourly rate of \$18.12).

16 34. However, this assumes an exposure based on a class having been certified and
17 Plaintiff having proven all elements of the overtime and minimum wage claims, despite risks
18 associated with obtaining and maintaining certification, risks to establishing liability, and
19 significant additional costs that would have to be incurred in order to certify a class and establish
20 liability. Plaintiff also faced the risk of the Court finding that individualized issues predominate,
21 such that class treatment is not suitable. While Class Counsel disagreed with Defendant's
22 arguments and factual contentions, Class Counsel recognized the circumstances and realities of
23 the case, applicable case law and regulations, the costs and expenses of further litigation and
24 certification, and risks to recovery, and applied appropriate discounts for them. With respect to
25 the overtime claim, at this juncture, a discount of 25% was applied to account for the risks
26 associated with obtaining and maintaining certification (bringing the value of the claim closer to
27 \$1,365,835.77), a discount of 30% was applied to account for the risks associated with succeeding
28 on the merits and establishing liability (bringing the value of the claim closer to \$956,085.04), and

1 a discount of 30% was applied to account for the risks associated with proving the extent of
2 damages and obtaining an award thereof (bringing the value of the claim closer to \$669,259.53).
3 Also, with respect to the minimum wage claim, at this juncture, a discount of 25% was applied to
4 account for the risks associated with obtaining and maintaining certification (bringing the value of
5 the claim closer to \$455,278.59), a discount of 30% was applied to account for the risks associated
6 with succeeding on the merits and establishing liability (bringing the value of the claim closer to
7 \$318,695.01), and a discount of 40% was applied to account for the risks associated with proving
8 the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$
9 \$191,217.01).

10 **B. Failure to Provide Compliant Meal Periods and Associated Premiums**

11 35. Plaintiff's theory of liability was also based on Defendant's failure to provide timely,
12 full, and/or uninterrupted meal periods. Plaintiff contended, *inter alia*, that Defendant's policies,
13 practices, and procedures required employees to perform job duties during their meal periods and
14 prevented them from regularly receiving compliant meal periods. For example, Plaintiff
15 contended that he and other putative class members were pressured and instructed to perform time-
16 sensitive job duties during meal periods. Plaintiff further contended that Defendant failed to pay
17 a meal premium for missed, late, short, or interrupted meal periods.

18 36. Under California law, an employer must provide an employee with uninterrupted
19 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
20 hours, except that if the total work period per day of the employee is no more than six (6) hours,
21 the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab.
22 Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an employee
23 works more than ten (10) hours per day, except that if the total hours worked is no more than
24 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
25 employee only if the first meal period was not waived. *Id.* An "on-duty" meal period may be
26 agreed to only if "the nature of the work prevents an employee from being relieved of all duty and
27 when by written agreement between the parties an on-the-job paid meal period is agreed to." IWC
28 Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An employer must pay each

employee to whom it fails to “provide” a meal period one hour of wages at his or her regular rate of pay “for each work day that the meal or rest period is not provided.” Cal. Lab. Code § 226.7(b).

37. Defendant contended that it had practices, policies, and procedures to provide meal every workday to its employees that fully complied with California law. To the extent that putative class members failed to take their meal periods or took a short or late meal, Defendant contended that they did so voluntarily and that all applicable meal periods were still provided to them. Thus, Defendant argued that it did not act unlawfully to deprive putative class members of meal periods. Defendant further contended that they implemented meal period waivers. Defendant also contended that there were multiple individual issues that would pose challenges to certification, including and not limited to, (a) whether any meal periods were non-compliant, and (b) why they were non-compliant. Defendant also contended that the putative class members held different job titles and had different job duties, and that as a result, there was variation to the circumstances that could allegedly cause the employees to be deprived of the opportunity to take legally-compliant, duty-free meal periods, and this variation in circumstances raised highly individualized questions of fact.

38. Class Counsel considered information obtained through investigations and from Plaintiff and other putative class members, as well as class data provided by Defendant, and created damages/valuation models prior to the mediation. Based thereon, assuming that it could be proven that one (1) meal premium is due for every workweek during the relevant time period, the potential value of this claim was estimated to be \$607,038.12 (33,501 workweeks x 1 meal premium x average hourly rate of \$18.12).

39. Class Counsel also considered the risk of further litigating the case, including the significant additional costs that will be incurred by both sides if the case does not settle, as litigating a class action through class certification, trial, and/or appeals is very expensive. Moreover, litigating meal period claims is inherently difficult as an employer’s records, as is the case here, do not usually indicate when a meal period is missed, late, short and/or interrupted. While Class Counsel disagreed with Defendant’s arguments and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable case law and

1 regulations, costs and expenses of further litigation and certification, and risks to recovery, and
2 applied appropriate discounts for them. At this juncture, a discount of 25% was applied to account
3 for the risks associated with obtaining and maintaining certification (bringing the value of the
4 claim closer to 455,278.59), a discount of 30% was applied to account for the risks associated with
5 succeeding on the merits and establishing liability (bringing the value of the claim closer to
6 318,695.01), and a discount of 30% was applied to account for the risks associated with proving
7 the extent of damages and obtaining an award thereof (bringing the value of the claim closer to
8 \$223,086.51).

9 **C. Failure to Provide Compliant Rest Periods and Associated Premiums**

10 40. Plaintiff's theory of liability was also based on Defendants' failure to provide their
11 employees with timely, full, and/or uninterrupted rest periods. Plaintiff contended that Defendants'
12 employment policies, practices, and procedures required employees to perform job duties during
13 their rest periods and prevented them from regularly receiving compliant rest periods. Plaintiff
14 contended that they and other putative class members were required to remain on premises during
15 rest periods and that Defendant failed to pay a rest period premium at any time during the relevant
16 time period.

17 41. California law requires an employer to provide rest periods to all employees at the
18 rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code
19 § 226.7. When an employer fails to provide a compliant rest period, the employer is required to
20 either (a) provide another rest period or (b) pay one additional hour of pay at the regular rate of
21 pay "for each work day that the meal or rest period is not provided." *Augustus v. ABM Security*
22 *Services, Inc.* (2016) 2 Cal.5th 257, 271-72; Cal. Lab. Code § 226.7(b). However, employees are
23 exempt from the rest breaks law, if their duties and responsibilities qualify for one or more of the
24 exemptions under California or federal law. See Cal. Lab. Code § 226.7(e); see e.g., 49 CFR
25 § 395.

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1 42. Defendants contended that they had methods, policies, and procedures to provide all
2 applicable rest periods every workday to putative class members that fully complied with the law.
3 Defendants argued that the reasons why a putative class member failed to receive a compliant rest
4 period raised individual issues that could not be certified.

5 43. Class Counsel considered information obtained through investigations and from
6 Plaintiff and other putative class members, as well as class data provided by Defendants, and
7 created damages/valuation models prior to the mediation. Based thereon, assuming that it could
8 be proven that one (1) rest period premium is due for every workweek during the relevant time
9 period, the potential value of this claim was estimated to be \$607,038.12 (33,501 workweeks x 1
10 rest period premium x average hourly rate of \$18.12).

11 44. Class Counsel also considered the risk of further litigating the matter, as well as
12 significant additional costs that will be incurred by both sides if the case does not settle, as
13 litigating a class action through class certification, trial, and/or appeals is very expensive.
14 Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the
15 case here, do not usually indicate when a rest period is short, late, interrupted or missed entirely.
16 While Class Counsel disagreed with Defendants' arguments and factual contentions, Class
17 Counsel recognized the circumstances and realities of the case, applicable case law and
18 regulations, the costs and expenses associate with further litigation and certification, and risks to
19 recovery, and applied appropriate discounts for them. At this juncture, a discount of 25% was
20 applied to account for the risks associated with obtaining and maintaining certification (bringing
21 the value of the claim closer to \$455,278.59), a discount of 50% was applied to account for the
22 risks associated with succeeding on the merits and establishing liability (bringing the value of the
23 claim closer to \$227,639.30), and a discount of 50% was applied to account for the risks associated
24 with proving the extent of damages and obtaining an award thereof (bringing the value of the claim
25 closer to \$113,819.65).

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D. Waiting-Time Penalties for Failure to Timely Provide Wages During Employment and Upon Termination

45. California Labor Code section 204 provides that wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Further, all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, are due and payable between the 1st and the 10th day of the following month.

46. Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff and putative class members all wages due to them while they were employed by Defendant, within the time period permissible under California law. These wages included, but were not limited to, minimum, regular, and overtime wages and meal and rest break premiums. However, arguably, this provision of the California Labor Code only states requirements and does not provide for private relief for failure to comply with the requirements stated therein. Instead, redress may be pursued for the failure to pay wages and meal and rest period premiums (which are discussed herein).

47. California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. If an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours of quitting, unless the employee has given seventy-two (72) hours of notice of his or her intention to quit, in which cases the employee is entitled to his or her wages at the time of quitting.

48. California Labor Code section 203 provides that if an employer fails to pay an employee all wages due at termination or within seventy-two (72) hours of resignation, in accordance with sections 201 and 202, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. California Labor Code section 203 further provides that the statute of limitations to recover the penalty is the same as the

1 statute of limitations for recovery of the unpaid wages from which the penalties arise, i.e. three
2 years.

3 49. Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff and
4 the other putative class members all wages due to them upon termination, within the time period
5 permissible under California law. For example, Plaintiff alleged that putative class members are
6 entitled to unpaid wages arising from, *inter alia*, off-the-clock work, as well as meal and rest
7 period premiums, thereby triggering waiting-time penalties under California Labor Code section
8 203.

9 50. Based on information and data provided by Defendant, it was estimated that
10 approximately two hundred sixty-six (266) putative class members had been terminated during the
11 three-year statute of limitations (i.e., from March 13, 2016). Assuming that these individuals were
12 not timely paid all wages due to them upon termination, the potential value of waiting-time
13 penalties claim was estimated to be \$1,156,780.80 collectively (266 individuals x [30 days x
14 hourly rate of \$18.12 x 8 hours]), or approximately \$4,348.80 per individual. However, this
15 presumes that Plaintiff would prevail on the underlying California Labor Code claims, which is
16 necessary to show that Defendant failed to timely pay wages that were due to the putative class
17 members upon termination.

18 51. Defendant was adamant that no waiting-time penalties should be awarded.
19 Defendant pointed out that waiting-time penalties are derivative of each and every other
20 underlying alleged California Labor Code violations and contended that it paid the terminated
21 employees all wages due and owing. Moreover, Defendant emphasized that, under California
22 Labor Code section 203, employers are only obligated to pay waiting-time penalties if they
23 “willfully” fail to pay wages due and owing at the time of termination or resignation. As Title 8,
24 California Code of Regulations, section 13520 states,

25 A willful failure to pay wages within the meaning of Labor Code
26 Section 203 occurs when an employer intentionally fails to pay wages
27 to an employee when those wages are due. However, a good faith
28 dispute that any wages are due will preclude imposition of waiting
time penalties under Section 203.

A “good faith dispute” that any wages are due occurs when an
employer presents a defense, based in law or fact, which, if successful,
would preclude any recovery on the part of the

employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a “good faith dispute.”

52. Accordingly, to assess the likely recovery of waiting-time penalties, Class Counsel also took into consideration the chances of prevailing on each of the underlying causes of action, as well as the additional hurdles of prevailing on the claim for waiting-time penalties, including the inherent difficulty in proving the “willful” prong of section 203, applicable case law, costs and expenses associated with further litigation and certification, the circumstances and realities of the case, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$578,390.40), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of the claim closer to \$289,195.20), and a discount of 50% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$144,597.60).

E. Wage Statement Violations

53. Plaintiff also alleged that Defendant violated California Labor Code section 226(a) which states that an employer must provide an accurate and itemized wage statement twice a month or each time wages are paid, whichever is the more frequent. Failure to do so entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). See Cal. Lab. Code § 226(e). Arguably, actual damages may be sought, under a three-year statute of limitations, or, statutory penalties may be sought, under a one-year statute of limitations.

54. Based on data provided by Defendant, it was estimated that approximately three hundred twenty-nine (329) putative class members worked during the one-year statutory limitations period (i.e., from March 13, 2018), and that these putative class members worked a total of seven thousand three hundred twenty-two (7,322) pay periods. Assuming that an injurious

1 wage statement could be proven for each of these putative class members for each of these pay
2 periods, the potential value of this claim was calculated to be \$715,750 ([329 initial violations x
3 \$50 initial violation penalty] + [(7,322-329) subsequent violations x \$100 subsequent violation
4 penalty]).

5 55. Defendant contended that Plaintiff and putative class members suffered no actual
6 injury from the alleged wage statement violations. Defendant also contended that this alleged
7 violation is entirely derivative of the foregoing allegations. In other words, Plaintiff would have
8 to prove, for example, that off-the-clock work occurred, that overtime was worked, that all hours
9 of work had not been properly recorded and compensated, and/or that non-compliant meal and rest
10 periods occurred and that Defendant did not pay premiums, etc., to demonstrate that the wage
11 statements were inaccurate. Defendant further contended, *inter alia*, that if off-the-clock and/or
12 overtime work occurred and was not reflected in the wage statements, it was because the work
13 was hidden from Defendant. Defendant also contended that no actual injury could be shown.
14 When assessing the value of this claim, Class Counsel considered these factors, the derivative
15 nature of this alleged violation, the chances of prevailing on each of the underlying causes of
16 action, applicable case law and regulations, costs and expenses associated with further litigation
17 and certification, realities of the case, and risks to recovery, and applied appropriate discounts for
18 them. At this juncture, a discount of 50% was applied to account for the risks associated with
19 obtaining and maintaining certification (bringing the value of the claim closer to \$357,875.00), a
20 discount of 50% was applied to account for the risks associated with succeeding on the merits and
21 establishing liability (bringing the value of the claim closer to \$178,937.50), and a discount of
22 50% was applied to account for the risks associated with proving the extent of damages and
23 obtaining an award thereof (bringing the value of the claim closer to \$89,468.75).

24 **F. Failure to Maintain Requisite Payroll Records**

25 56. Plaintiff alleged that Defendant has intentionally and willfully failed to keep
26 accurate and complete payroll records showing the hours worked daily by, and the wages paid to,
27 Plaintiff and the putative class members. Plaintiff also alleged that Defendant's intentional and
28

1 willful failure to keep accurate payroll records, and that Plaintiff and putative class members have
2 suffered injury and damage as a result.

3 57. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
4 central location in the state or at the plants or establishments at which employees are employed,
5 payroll records showing the hours worked daily by and the wages paid to, and the number of piece-
6 rate units earned by and any applicable piece rate paid to, employees employed at the respective
7 plants or establishments. These records must be kept in accordance with rules established for this
8 purpose by the Labor Commissioner, but in any case, shall be kept on file for not less than three
9 years. Under California Labor Code section 1174.5, a willful violation of the employer's
10 recordkeeping obligations set forth in California Labor Code section 1174(d) is subject to a civil
11 penalty of \$500. Arguably, this civil penalty would only be recoverable by the Labor
12 Commissioner, however, Plaintiff asserts a cause of action under PAGA. Therefore, the value of
13 this claim is considered as a part of the valuation of the PAGA claims contained *infra*.

14 58. Defendant contended that Plaintiff and putative class members suffered no actual
15 injury or damage from the alleged recordkeeping violations. Moreover, Defendant challenged
16 certification of the recordkeeping issue on the basis that individual liability issues predominated,
17 including (a) whether each putative class member's payroll records were not maintained properly,
18 and (b) whether Defendant's alleged failure to keep requisite payroll records was "willful." Like
19 the wage statement violations, this cause of action is entirely derivative of the causes of action for
20 failure to pay overtime and minimum wages and failure to provide complaint meal or rest periods.

21 59. As such, to assess the value of the claim, Class Counsel also took the foregoing
22 factors into account, as well as Defendant's defenses and contentions, the derivative nature of this
23 cause of action, the chances of prevailing on the other causes of action, the inherent difficulty in
24 proving the "willful" prong of California Labor Code section 1174.5, applicable case law and
25 regulations, costs and expenses of further litigation and certification, the circumstances and
26 realities of the case, and risks to recovery, and applied appropriate discounts for settlement
27 purposes.

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1 **G. Unreimbursed Business Expenses**

2 60. Plaintiff contended that Defendant failed to reimburse Plaintiff and other putative
3 class members for necessary business expenses, including but not limited to, costs associated with
4 use of personal cell phones, mileage, and travel expenses to carry out their job duties.

5 61. California Labor Code section 2802 requires an employer to indemnify its
6 employees for all necessary expenditures made by the employee in direct consequence of the
7 discharge of his or her duties, or of his or her obedience to the directions of the employer.

8 62. Defendant contended that it has a policy and practice of reimbursing employees for
9 necessary business-related expenses. Defendant also contended that, with respect to the alleged
10 expenses for which Plaintiff and other putative class members never requested reimbursement
11 from Defendant, Defendant did not know and had no reason to know that the alleged business-
12 related expenses were incurred. Defendant further contended that the reason for why a putative
13 class member undertook certain expenses, while not others, and failed to receive reimbursement
14 for certain expenses while not others, would raise individual issues that could not be certified.

15 63. Defendant also contended that the California Labor Code only requires
16 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course
17 of performing work—and argued that distinguishing a necessary expense from an unnecessary one
18 would require individualized inquiry. See, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks*
19 *Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary,
20 would depend, in part, on the reasonableness of the employee’s choice, and whether or not an
21 expense was incurred, would have to be established by way of extensive individual factual inquiry
22 and/or statistical evidence. *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th
23 1137.

24 64. If Plaintiff proved that Defendant willfully failed to reimburse necessary business-
25 related expenses to putative class members in the amount of five dollars (\$5) each per workweek
26 during the relevant time period, the potential value of this claim would be \$167,505.00 (33,501
27 total workweeks x \$5 business expenses). Class Counsel also took into consideration that, not
28 only would it have to be established that expenses were incurred, but also that the nature of the

1 expenses were such that Defendant was required to reimburse them. While Class Counsel
2 disagreed with Defendant's arguments and factual contentions, Class Counsel considered
3 Defendant's arguments, applicable case law and regulations, the costs and expenses associated
4 with further litigation and certification, the circumstances and realities of the case, and risks to
5 recovery, and applied appropriate discounts for them. At this juncture, a discount of 75% was
6 applied to account for the risks associated with obtaining and maintaining certification (bringing
7 the value of the claim closer to \$41,876.25), a discount of 50% was applied to account for the risks
8 associated with succeeding on the merits and establishing liability (bringing the value of the claim
9 closer to \$20,938.13), and a discount of 30% was applied to account for the risks associated with
10 proving the extent of damages and obtaining an award thereof (bringing the value of the claim
11 closer to \$14,656.69).

12 **H. Unfair Business Practices**

13 65. Plaintiff's sole cause of action is for Defendant's alleged violation of the California's
14 Unfair Competition Law, Business and Professions sections 17200, *et seq.* ("UCL") which
15 prohibits any "unlawful, unfair or fraudulent business practices." A violation of the UCL may be
16 predicated on the violation of any law.

17 66. Arguably, California Business and Professions Code section 17208 extends the
18 statute of limitations on Plaintiff's other allegations, which qualify as unfair business practices, to
19 four (4) years. However, claims brought under the UCL are equitable actions for injunctive or
20 restitutionary relief, and a court may take into consideration equitable defenses when fashioning
21 equitable remedies. Restitution under the UCL is limited to returning to Plaintiff and putative
22 class members monies unlawfully withheld, such as unpaid wages or unpaid meal or rest period
23 premiums, or restitutionary disgorgement.

24 67. Plaintiff contended that each of Defendant's alleged violations of the California
25 Labor Code constitute business practices that are either unlawful (i.e., is forbidden by law) and/or
26 unfair (i.e., harm to victim outweighs any benefit). In order to prevail on the UCL cause of action,
27 Plaintiff would have to prove that Defendant violated the predicate provisions of law, and that the
28 violations constitute unlawful and/or unfair business acts and practices in violation of California

1 Business and Professions Code sections 17200, *et seq.* Plaintiff would have to prove that
2 Defendant's conduct throughout the time period at issue has been unfair, unlawful, harmful, and
3 injurious to Plaintiff and putative class members. With respect to the UCL's standing requirement,
4 Plaintiff would also have to prove that they suffered an economic injury as a result of Defendant's
5 conduct.

6 68. As discussed above, Defendant vigorously challenged the likelihood of Plaintiff's
7 success in establishing that any of provisions of the California Labor Code, on which the UCL
8 claim is predicated, were violated and that such violations were injurious. Throughout this
9 litigation, Defendant also relentlessly challenged Plaintiff's standing and adequacy to assert class
10 claims and contended there were individualized issues that would pose challenges to certification.
11 When assessing the likelihood of prevailing on this cause of action, Class Counsel considered all
12 of the above, as well as Defendant's factual contentions and legal arguments, the chances of
13 prevailing on the other causes of action, costs and expenses associated with further litigation and
14 certification, and risks to recovery, and applied appropriate discounts for settlement purposes.

15 **I. PAGA Penalties**

16 69. Under the PAGA, civil penalties to be assessed and collected by the state labor
17 agency for a violation of the California Labor Code, may, as an alternative, be recovered by an
18 aggrieved employee plaintiff. If the California Labor Code already specifies and provides a civil
19 penalty for the violation of a provision of the California Labor Code, said civil penalty is
20 recoverable by the aggrieved employee plaintiff. Additionally, the PAGA statute establishes a
21 civil penalty that is recoverable by an aggrieved employee plaintiff, for violation of provisions of
22 the California Labor Code for which the California Labor Code does not specifically provide for
23 a civil penalty, as follows: one hundred dollars (\$100) for each aggrieved employee per pay period
24 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
25 for each subsequent violation. Cal. Lab. Code § 2699(f). Pursuant to California Labor Code
26 section 2699(i), seventy-five percent (75%) of the penalties recovered must be allocated to the
27 State of California, with the remaining twenty-five percent (25%) allocated to the aggrieved
28

employees. The statute of limitations period applicable to such penalties is one year prior to the filing of the complaint. Cal. Code Civ. Proc. § 340.

70. Defendant contended that violations of multiple provisions of the California Labor Code would not give rise to cumulative penalties, and at best, would only trigger an initial violation penalty and a subsequent violation penalty once per pay period, if at all.

71. Defendant contended that an important feature of the PAGA statute is that, when determining whether or not to assess a penalty, the court exercises the same discretion that the LWDA has and may reduce the penalties to be assessed against the employer pursuant to section 2699(e)(1)-(2). As such, Defendant contended that, with respect to a PAGA claim, the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem.

72. Defendant also maintained and continues to maintain that it had legally-compliant employment policies and practices throughout the statutory period. Defendant denied and continues to deny that it ever violated any provision of the California Labor Code and argued, that, even if, *arguendo*, such violations occurred, it will not be treated as having engaged in subsequent violations giving rise to heightened penalties. In other words, Defendant argued that heightened civil penalties for subsequent violations would not be assessed unless it could be shown that Defendant had notice that it was violating the law, e.g. because it had been cited by a labor agency or adjudged by a court to have done so. See, e.g., *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.4th 1157, 1209. Defendant argued that it would be able to show a lack of willfulness in the violations, such that the alleged California Labor Code violations would not be considered “willful.” Defendant contended that, at best, even if a violation giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with initial violations would apply.

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1 73. Importantly, to prevail on the PAGA claim, Defendant contended that some courts
2 have required Plaintiff to show at the outset that they have suffered injury, in order to establish
3 standing, and that Plaintiff would also have to prove all requisite elements to prove violations of
4 the underlying California Labor Code provisions, in order to show that Defendant's conduct gave
5 rise to penalties. The unpaid wage and meal and rest period allegations are fundamental to this
6 action; however, for the reasons discussed above, there were substantial challenges to showing
7 liability and exposure for these claims. Defendant argued that Plaintiff would not be able to
8 establish violations of the underlying California Labor Code provisions and the fundamental
9 allegations regarding unpaid wages and meal and rest periods. Defendant also contended that
10 multiple individualized issues vitiated the manageability of representative adjudication of the
11 PAGA claim.

12 74. Defendant would also likely seek bifurcation of discovery and/or trial of the PAGA
13 claim – many courts have taken such an approach.

14 75. Defendant also maintained that, in addition to its strong arguments against the
15 underlying claims, taking the current unsettled state of law, it would be unjust to award the
16 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
17 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
18 methodology for the valuation and/or assessment of PAGA penalties.

19 76. Defendant also contended that before a PAGA claim could be tried, under existing
20 law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based
21 on a theory of uniform wage and hour practices relating to a large group of aggrieved employees,
22 is sufficiently “manageable” so as not to interfere with Defendant's right to due process.
23 Defendant asserted that the putative class members worked different positions, and that their job
24 roles, job duties, work locations, and work hours varied. Defendant contended that there was
25 variation as to the circumstances that could allegedly cause the employees to work off-the-clock,
26 or to be deprived of the opportunity to take legally-compliant, duty-free meal and/or rest periods.
27 Defendant further contended that these issues presented challenges to Plaintiff ability to show that
28

1 a PAGA claim could be efficiently and manageably adjudicated without abridging Defendant's
2 due process rights.

3 77. Defendant pointed to case law that held that, given the derivative nature of a PAGA
4 claim, it would stand or fall based on the claims from which it derives, and the success of showing,
5 *inter alia*, off-the-clock work, failure to properly pay wages, failure to reimburse for expenses,
6 etc. Defendant also pointed to case law demonstrating that courts have attributed little separate
7 value to PAGA claims, for example, allowing them to be resolved for \$0 where the other
8 underlying California Labor Code claims are being resolved. See, e.g. *Matter of Nordstrom*
9 *Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No abuse of discretion by the trial court
10 in approving the allocation of \$0 toward PAGA penalties, where PAGA claim is resolved as a part
11 of an overall resolution of the underlying California Labor Code violations); *Franco v. Ruiz Food*
12 *Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14
13 (approving allocation of \$10,000, out of the settlement of \$2.5 million, toward the settlement of
14 the PAGA claim); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-
15 SKO, 2012 WL 5364575, at *3 (approving the allocation of \$10,000, out of the settlement of \$3.7
16 million, toward the settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D.
17 Cal. Feb. 16, 2011) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (approving
18 the allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the PAGA
19 claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683—MMA (JMA), 2011
20 WL 4899942, at *18 (approving the allocation of \$3,000, out of the settlement of \$1.2 million,
21 toward the settlement of the PAGA claim); *Schiller v. David's Bridal, Inc.* (E.D. Cal. June 11,
22 2012) 2012 WL 2117001, at *14 (approving the allocation of \$10,000, out of the settlement of
23 \$518,245, toward settlement of the PAGA claim).

24 78. Assuming that a court would be satisfied that the PAGA claim was susceptible to
25 being efficiently tried and adjudicated on a representative basis, and assuming that it could be
26 shown that civil penalties in the amount of two thousand dollars and no cents (\$2,000) are owed
27 for each of the three hundred nine (329) aggrieved employees who were estimated to have worked
28 during the one-year statutory period (i.e., from March 13, 2018), the PAGA penalties at issue,

1 which the Court could determine whether or not to assess and whether or not to reduce, were
2 estimated to be approximately 658,000.00 (329 individuals x \$2,000 civil penalties).

3 79. At Class Counsel recognized the realities of Defendant's arguments, evidence and
4 information obtained through investigations as well as from Defendant, the circumstances and
5 realities of the case, the current state of the law, the costs of continued litigation, and the risks to
6 recovery, and applied appropriate discounts for them. At this juncture, a discount of 25% was
7 applied to account for the risks associated with establishing manageability and possible bifurcation
8 of discovery and/or trial (bringing the value of this claim closer to \$493,500), a discount of 50%
9 was applied to account for the risks associated with succeeding on the merits and establishing
10 liability (bringing the value of the claim closer to \$246,750), and a discount of 60% was applied
11 to account for the risks associated with proving the extent of penalties that are warranted and
12 possible discretionary reduction of penalties by the Court (bringing the value of the claim closer
13 to \$98,700).

14 80. Although, strictly-speaking class certification requirements are not required to be
15 satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication
16 and valuation of a PAGA claim is uncertain. Instead, what is clear is that the purpose of the PAGA
17 is not to generate revenue for the State, but rather, to facilitate the enforcement of the labor laws.
18 See, e.g., *Williams v. Superior Court* (2017) 3 Cal. 5th 531, 546; *Arias v. Superior Court* (2009)
19 46 Cal.4th 969, 986; Cal. Lab. Code § 2699(i). In assessing the adequacy of the recovery under a
20 PAGA claim, the focus is not the amount which the LWDA and the aggrieved employees are to
21 receive formally in the form of monetary civil penalties, but instead, whether the total settlement
22 amount achieves the PAGA's objectives. "When PAGA claims are settled, courts "consider
23 whether the proposed PAGA settlement is fair and adequate in view of the purposes and policies
24 of the statute[]" and "[t]hose purposes and policies include benefit[ing] the public by augmenting
25 the state's enforcement capabilities, encouraging compliance with California Labor Code
26 provisions, and deterring noncompliance." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110,
27 1132-33 and 1135 (N.D. Cal. 2016). A "[c]ourt does not review the PAGA allocation in isolation,
28 but rather reviews the settlement as a whole, to determine whether it is fundamentally fair,

1 reasonable and adequate, with primary consideration for the interests of absent class members.””
2 LWDA Response at 4, *O’Connor v. Uber Techns.*, No. 13-CV- 03826-EMC, Docket No. 736
3 (N.D. Cal. July 29, 2016). “PAGA penalties must be evaluated in terms of their public policy
4 objective and not just through the prism of what private relief has been sought or obtained.” *Id.*
5 at 4.

6 81. Here, the overall relief obtained by way of the Settlement is significant, not only
7 from a monetary perspective, but also, from the perspective of deterring noncompliance with (and
8 thereby, facilitating enforcement of) California labor laws. Defendant has agreed to pay
9 \$1,565,000.00 to settle disputed claims, and based on the analysis and valuation of the claims, it
10 was determined that a PAGA allocation of \$100,000.00 is appropriate. The potential value of the
11 PAGA claim is \$658,000 (which is 12.12% of the potential value of all of the claims) and the
12 reasonable value of the PAGA claim is \$98,700 (which is 7.95% of the reasonable value of all of
13 the claims). As such, it was determined that a PAGA allocation between approximately 5-10% of
14 the total settlement amount would be reasonable. Under the Settlement, the amount of \$100,000
15 has been allocated toward PAGA penalties; this is a reasonable allocation because it is 6.39% of
16 the Settlement Sum of \$1,565,000.00, but also, because the allocation represents 15.20% of the
17 potential value of the PAGA claim and 101.32% of the reasonable value of the PAGA claim.
18 Furthermore, the Settlement fulfills the public policy objective of providing redress to aggrieved
19 employees, providing funds to the State for enforcement of labor laws, and promoting enforcement
20 through deterrence.

21 **J. Summary**

22 82. The foregoing discussion confirms that the amount of the Settlement is adequate in
23 light of the merits of this case, Plaintiffs’ allegations and causes of action, the evidence at issue
24 with respect to those allegations and causes of action, and legal and factual arguments and
25 circumstances which pose challenges to monetary recovery. Class Counsel estimates that the
26 potential value to be recovered if Plaintiff were successful at trial on all of the claims is
27 \$6,340,264.52, and the total value that could reasonably be expected to be awarded at trial, taking
28 into account the likelihood of prevailing and other attendant risks, is \$1,544,805.74. Seen in this

light, the Gross Settlement Fund of \$1,565,000.00 represents 24.68% of the potential value and 101.3% of the risk-adjusted value of the claims.

Principle Claim	Potential Value	Risk-Adjusted Realistic Value
1. Failure to Pay Overtime Wages	\$1,821,114.36	\$669,259.53
2. Failure to Pay Minimum Wages	\$607,038.12	\$191,217.01
3. Failure to Provide Compliant Meal Periods and Associated Premiums	\$607,038.12	\$223,086.51
4. Failure to Provide Compliant Rest Periods and Associated Premiums	\$607,038.12	\$113,819.65
5. Failure to Timely Provide Wages and Waiting-Time Penalties	\$1,156,780.80	\$144,597.60
6. Failure to Provide Compliant Wage Statement	\$715,750	\$89,468.75
7. Failure to Maintain Requisite Payroll Records	See item 9.	
8. Failure to Reimburse Business Expenses	\$167,505	\$14,656.69
9. Unfair Business Practices	See items 1, 2, 3 and 7.	
10. Private Attorneys General Act	\$658,000	\$98,7000
Total:	\$6,340,264.52	\$1,544,805.74

The conclusion to be drawn from the foregoing analysis is that neither class certification, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide basis is clear-cut, which is why the Parties elected to settle this matter. Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses of further litigation and certification, and risks to recovery and applied appropriate discounts as discussed above. This Settlement involves highly disputed claims and, like most other settlements, is the product of compromise.

83. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class. Class Counsel also submits that the Settlement and accompanying moving papers satisfy the requirements set forth in the Class Action Case Management Order #1 issued by the Court, as reflected in the Compliance Chart, attached hereto as “**EXHIBIT 2.**” Class Counsel further submits that the Settlement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication,

trial, and/or appeals.

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

Executed on this 4th day of November 2021, at Glendale, California.

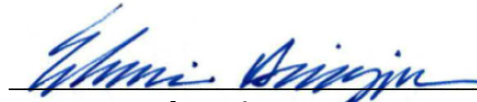

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EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement” or “Settlement Agreement”) is made between Plaintiff SAMUEL ELLIOTT (“Plaintiff”), on behalf of himself and all others similarly situated, on the one hand, and Defendant MED-DATA, INCORPORATED (“Defendant”), on the other hand. Plaintiff and Defendant will at times be referred to as the “Parties” or as a “Party.”

RECITALS

WHEREAS, Plaintiff was employed by Defendant during the alleged “Class Period,” defined as the period between March 13, 2015 and August 19, 2020;

WHEREAS, on March 13, 2019, Plaintiff filed a Class Action Complaint for Damages (the “Complaint”) in the Superior Court of California, County of Riverside, Case Number RIC1901865, entitled *Samuel Elliott v. Med-Data, Incorporated* (the “Action”), asserting the following causes of action on behalf of all hourly-paid or non-exempt employees who worked for Defendant in the State of California at any time since March 13, 2015: (1) Failure to Pay Overtime, (2) Failure to Provide Meal Periods, (3) Failure to Provide Rest Breaks, (4) Failure to Pay Minimum Wages, (5) Failure to Timely Pay Final Wages at Separation, (6) Failure to Timely Pay Wages During Employment, (7) Failure to Provide Accurate Wage Statements, (8) Failure to Keep Requisite Payroll Records, (9) Failure to Reimburse Business Expenses, and (10) Unfair Competition;

WHEREAS, on February 28, 2020, the Parties attended a private mediation with the Hon. Michael Latin (Ret.) of Signature Resolution;

WHEREAS, on August 18, 2020, the Parties continued the private mediation and with the assistance of Judge Latin, the Parties agreed to resolve the Action according to the terms and conditions contained herein (the “Settlement”);

WHEREAS, Defendant denies the validity of Plaintiff’s claims in the Action; however, for the purposes of settlement only, and conditioned on the settlement being approved by Riverside County Superior Court (“Court”), the Parties agree that certification of the class is appropriate and the requisites for establishing class certification are met;

WHEREAS, the Parties want to resolve and settle the dispute that has arisen between them, as well as any other claims, asserted or not asserted, that either Party may have against the other arising out of facts or events occurring up to and including the date of execution of this Agreement;

NOW, THEREFORE, in consideration of the promises in this Agreement, the Parties agree as follows:

AGREEMENT

1. No Admission of Liability. It is understood and agreed by Plaintiff that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability by Released Parties. Plaintiff further agrees that this Agreement cannot be used as evidence, nor can it be referred to

or relied upon, in any arbitration, administrative, court, or legal proceeding (other than to seek preliminary and final court approval of this Agreement, enforce the terms of this Agreement or as required by a valid court order). Defendant disclaims and denies any liability, obligation, or responsibility to Plaintiff whatsoever.

2. First Amended Complaint. Within five (5) calendar days following the date that the Parties execute this Agreement, Plaintiff shall provide the California Labor and Workforce Development Agency (“LWDA”) with notice of his intent to assert a claim against Defendant in the Action for violation of the Private Attorneys General Act of 2004 (“PAGA”) based on its performance of the acts alleged in the Complaint. Within seventy (70) calendar days after doing so, provided that the LWDA has not itself asserted claims against Defendant for the actions described in Plaintiff’s notice, Plaintiff shall seek leave to file an amended complaint (“First Amended Complaint”) in the Action containing an additional cause of action against Defendant for violation of the California Private Attorneys General Act based on its performance of the acts alleged in the Complaint.

3. Gross Settlement Payment. In consideration for the releases described in Paragraphs 4 and 5, and subject to approval by the Court of this Agreement, Defendant agrees to pay the gross amount of One Million Five Hundred Sixty-Five Thousand Dollars and Zero Cents (\$1,565,000.00) (the “Settlement Sum”) (as defined in Paragraph 7 below) subject to the following terms and conditions:

a. Plaintiff will request and Defendant will not oppose an enhancement award in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff (“Enhancement Award”), in addition to any amount he may be entitled to under the distribution formula as identified in Paragraph 6 for his time, effort, expense, and risks associated with the Action, and a broader, general waiver of his rights. This payment will be reported as 1099 income and will not be subject to deductions. Defendant will not oppose any such application for an Enhancement Award described herein so long as it is consistent with the amount herein. This amount shall come from, and shall not be in addition to, the Settlement Sum. Plaintiff acknowledges his responsibility for any and all taxes for these sums pursuant to Paragraph 3.e;

b. The Parties agree that up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the Settlement Sum will be for the payment of settlement administration costs of a third-party administrator (“Settlement Administration Costs”). The Settlement Administration Costs shall be paid from, and shall not be in addition to, the Settlement Sum;

c. The Parties agree that up to One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the Settlement Sum will be allocated to Plaintiff’s claims for penalties under the Private Attorneys General Act of 2004 (“PAGA Allocation”) and will be distributed in accordance with the percentages identified within PAGA (i.e. twenty-five percent (25%) of the \$100,000 PAGA Allocation, or \$25,000, will be distributed to the Settlement Class Members, and seventy-five percent (75%) of the PAGA Allocation, or \$75,000, will be distributed to the California Labor and Workforce Development Agency (“LWDA Payment”). These amounts shall be paid from, and shall not be in addition to, the Settlement Sum;

d. Plaintiff will request and Defendant will not oppose an award of attorneys’ fees of up to thirty-five percent (35%) of the Settlement Sum (i.e. \$547,750) and reimbursement of litigation costs and expenses of up to \$25,000 to Class Counsel (“Attorneys’ Fees and Costs”). Defendant will not oppose

any request for Attorneys' Fees and Costs so long as it does not exceed this threshold. These amounts shall come from, and shall not be in addition to, the Settlement Sum. With respect to the Attorneys' Fees and Costs to Class Counsel, the Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase of an annuity by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included within the Settlement Administrator Costs. Defendant and Defendant's counsel shall not be liable for any expenses associated with the purchase of an annuity by the Settlement Administrator;

e. Each Individual Settlement Share will be allocated as follows: one-third (1/3) wages and two-thirds (2/3) interest, penalties, and non-wage damages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to interest, penalties, and non-wage damages will be reported on an IRS Form-1099 by the Administrator. The Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their Individual Settlement Share net of these taxes and withholdings. The employee's and employer's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares (ie, payroll taxes) is included in the Settlement Sum. Given the size of the Gross Settlement Amount, the Parties submit the taxes and withholdings being included in the Settlement Sum is appropriate and will still adequately compensate the Settlement Class Members. The Plaintiff and Settlement Class Members shall be responsible for any and all tax obligations, including payroll taxes, associated with any payments they receive as part of the Settlement Sum.

f. There shall be a Net Settlement Sum that is distributed to Class Members who do not opt out of the Settlement ("Settlement Class Members") in accordance with the allocations set forth in Paragraph 7 below. The "Net Settlement Sum" shall be the Settlement Sum less the Court-approved Enhancement Award, Settlement Administration Costs, Court-approved Attorneys' Fees and Costs, and LWDA Payment. All Settlement Class Members will receive a *pro rata* portion of the Net Settlement Sum ("Individual Settlement Share") based on the number of workweeks that each of them worked for Defendant during the Class Period ("Workweeks"). A Workweek will be any week in which a Class Member worked at least on (1) day, and each Class Member will be credited with at least one (1) Workweek. Specifically, the final Individual Settlement Shares will be determined by the Administrator by taking the number of Workweeks each individual Settlement Class Member worked during the Class Period and dividing that by the total number of Workweeks Settlement Class Members worked during the Class Period and multiplying the resulting figure by the Net Settlement Sum; and

g. Within fourteen (14) calendar days after the Effective Date, Defendant shall deposit the Settlement Sum (\$1,565,000.00) in a Qualified Settlement Fund account established by the Administrator. "Effective Date" means the latter of: (a) if any timely objections are filed and not subsequently withdrawn, the 60th day after the Court enters an order granting final approval of this Settlement Agreement; (b) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement Agreement; or (c) if no timely objections are filed, or if all objections are withdrawn, the date upon which the Court grants final approval of this Agreement. For purposes of counting the fourteen (14) day deadline established by this section, Court approval may be by way of minute order, order from the bench, or by signing a submitted Final Approval order, whichever is earlier. The Administrator is to provide Defendant advance notice

within seven (7) calendar days after the Court grants final approval of this Agreement regarding the total monies Defendant must deposit.

4. Release. In exchange for the mutual promises and consideration set forth in this Agreement, the sufficiency of which is hereby acknowledged by the Parties, a release of liability is understood and agreed to as follows:

a. “Released Parties” as referenced herein and as released in the Agreement shall collectively mean:

- i. Defendant and Defendant’s directors, officers, agents, and employees;
- ii. MEDNAX Services, Inc. and any affiliates or subsidiaries, and their officers, directors, officers, agents, and employees;
- iii. Cardon Healthcare Network, LLC and Cardon Healthcare Network, LLC’s directors, officers, agents, and employees;
- iv. Alegis Revenue Group, LLC and Alegis Revenue Group, LLC’s directors, officers, agents and employees; and
- v. Diversified Healthcare Services, LLC and Diversified Healthcare Services, LLC’s directors, officers agents, and employees.

MEDNAX Services, Inc. is included in the definition of Released Parties as the former parent company of Defendant. Cardon Healthcare Network, LLC, Alegis Revenue Group, LLC and Diversified Healthcare Services, LLC are entities that employed potential Class Members in California, and are currently direct or indirect subsidiaries of Defendant.

b. Plaintiff Samuel Elliott, on behalf of himself and his heirs, successors, assigns, attorneys and agents, hereby releases and forever discharges the Released Parties from any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens acts, costs, expenses, sums of money, suits, dues, actions or causes of action, both in law and in equity, whether known or unknown, matured or unmatured, suspected or unsuspected, which they ever had, now have, or may have in the future with regard to any claims made, or which could have been made, in the Action through the date that the Court grants preliminary approval of this settlement including, but not limited to, any claims for failure to pay wages, failure to pay minimum wages, failure to pay overtime wages, failure to pay hourly wages, failure to pay piece-rate wages, failure to pay on-call wages, failure to pay meal period wages, failure to pay rest period wages, failure to provide rest breaks, failure to provide meal periods, failure to provide accurate wage statements, failure to pay wages upon separation, failure to pay reporting time pay, failure to provide notice of sick leave, failure to reimburse business expenses, violations of the California Private Attorneys General Act, violations of the California Industrial Welfare Commission’s (“IWC”) Wage Orders, violations of California Labor Code §§201, 202, 203, 204, 206, 210, 218.6, 226, 226.7, 246, *et seq.*, 351, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2698, *et seq.*, 2699, 2800, 2802, California Business and Professions Code §§ 17200, *et seq.*, and all claims for costs, attorney’s fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto. Notwithstanding the above, nor anything else in this Settlement, Plaintiff’s waiver and release in this Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers’ compensation claims, pending or otherwise; and (ii) rights or claims arising out of this Settlement.

c. As a condition of participating in the Settlement, as of the Effective Date and full funding of the Settlement Sum, Settlement Class Members, hereby release and forever discharge the Released Parties from any and all claims made, or which could have been made, based on the facts alleged in the First Amended Complaint arising during the Class Period including, but not limited to, any claims for failure to pay wages, failure to pay minimum wages, failure to pay overtime wages, failure to pay hourly wages, failure to pay meal period wages, failure to pay rest period wages, failure to provide rest breaks, failure to provide meal periods, failure to provide accurate wage statements, failure to pay wages upon separation, failure to reimburse business expenses, violations of the California Private Attorneys General Act, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders, violations of California Labor Code §§201, 202, 203, 204, 206, 210, 218.6, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2698, *et seq.*, 2699, 2800, 2802, California Business and Professions Code §§ 17200, *et seq.*, and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto (the "Released Claims").

5. California Civil Code Section 1542. Plaintiff hereby agrees that all rights under section 1542 of the Civil Code of the State of California are hereby waived as to the individuals or other claims they may have against Defendant. Section 1542 has been explained to Plaintiff by his counsel and provides as follows:

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

6. Motion for Preliminary Approval of Class Action Settlement. Plaintiff and Class Counsel shall make their best efforts to file a motion seeking preliminary approval of this Agreement concurrent with seeking the Court's certification of the class for settlement purposes as soon as reasonably possible after filing a First Amended Complaint in the Action. Defendant agrees to cooperate with Plaintiff in these efforts so that the motion seeking preliminary approval and concurrent certification of the class for settlement purposes is filed in a timely manner.

7. Administrator and Distribution Method. The Parties agree that Simpluris, Inc. will serve as the settlement administrator ("Administrator") to handle the settlement notice administration and process and distribute the Settlement Sum in accordance with the Agreement. The Parties each represent that they do not have any financial interest in the Administrator or otherwise have a relationship with the Administrator that could create a conflict of interest. In addition, and subject to Court approval, timelines, and methods related to the administration of this Agreement shall be as follows:

a. For purposes of this Agreement, Class Members are defined as: "all current and former hourly-paid or non-exempt employees who worked for Defendant in California at any time between March 13, 2015 and August 19, 2020."

b. All Settlement Class Members (i.e., Class Members who do not opt out of the Settlement) will receive a portion of the Net Settlement Sum on a *pro rata* basis based on each of their

number of Workweeks. The Administrator shall mail and distribute to all Class Members a Notice of Class Action Settlement (“Class Notice”) in substantially the form attached hereto as “**Exhibit A**”, Objection Form in substantially the form attached hereto as “**Exhibit B**”, and Exclusion Form in substantially the form attached hereto as “**Exhibit C**” (together, “Notice Packet”), in English by First Class U.S. Mail, informing them of the basic information regarding the Settlement terms, how to submit objections, how to exclude themselves from this Settlement, their estimated Individual Settlement Share, how to dispute the number of Workweeks credited to each of them, and the date for a Final Approval Hearing. The Class Notice will also include the estimate of the likely recovery of the average Class Member and the range of estimated Individual Settlement Shares.

c. Within seven (7) calendar days after the date that the Court grants preliminary approval of this Agreement, Defendant shall provide a list of all Class Members and all necessary information to the Administrator to locate Class Members and process payments, including, but not limited to, Class Member Workweeks or dates of employment, last known addresses, Social Security numbers, and any other information required to effectuate the Agreement (“Class List”).

d. The Class List, and any other data provided by Defendant to the Administrator, shall be treated as confidential and not subject to disclosure by the Administrator except (a) relevant information may be provided to Class Counsel to the extent necessary to address a dispute or to respond to a specific inquiry from a Class Member, or to any third party; (b) to allow Defendant and Class Counsel to review and confirm the calculation of Class Members’ estimated share of the Settlement is accurate and based on the correct information; and (c) as is otherwise necessary for the Administrator to perform its obligations described in this Agreement. Further, the Administrator and Class Counsel shall use commercially reasonable efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as permitted by this Agreement, and shall destroy the data (and all copies of it) in a complete and secure manner when such data is no longer required for purposes of this Agreement. The Administrator shall ensure that the Notice Packet and any other communications to Class Members does not include the Class Members’ Social Security number, except for the last four digits.

e. Within fourteen (14) calendar days from the date on which the Court preliminarily approves this Agreement, the Administrator will provide the Parties a spreadsheet showing the Administrator’s calculations for anticipated payments to Class Members, and the allocation of Workweeks to Class Members. The Administrator may redact any identifying information and instead use an employee number to differentiate (except as to the named Plaintiff to the Action) in order to protect Class Members’ confidential information. This will allow Plaintiff and Defendant the opportunity to review the Administrator’s calculations, and the Administrator will confirm receipt and approval of the spreadsheet by the Parties prior to disbursing the Notice Packet, as noted below.

f. Within twenty-one (21) calendar days from the date the Court preliminarily approves this Agreement, the Administrator will perform a National Change of Address (“NCOA”) check for Class Members’ most current addresses based on the information provided by Defendant and will mail the Court-approved Notice Packet to the Class Members. The Class Members will have forty-five (45) calendar days from the date of mailing the Notice Packet in which to postmark returned information either contesting the number of Workweeks allocated to them, requesting to opt out of the Settlement, or

objecting to the Settlement (“Response Deadline”). For any Notice Packets that are returned as undeliverable or notifying the Administrator that the Class Member is no longer at the address, the Administrator shall perform a skip-trace on that individual and re-mail the Notice Packet within three (3) business days of receiving information that the mailing was undeliverable or the Class Member was no longer at the address to the new address found in under the skip-trace. Individuals who have Notice Packets re-mailed to them shall have an additional fourteen (14) calendar days to dispute the number of Workweeks allocated to them, request to opt out of the Settlement, or object to the Settlement (“Extended Response Deadline”).

g. Procedure for Objecting. To object to the Settlement, a Class Member who does not opt out of the Settlement (i.e., Settlement Class Member) must submit a complete and timely Objection Form (in the form attached hereto as “**Exhibit B**”) or a written objection (together, “Objection”) to the Administrator on or before the Response Deadline, or in the case of a re-mailed Notice Packet, the Extended Response Deadline. To be valid, an Objection Form must be complete and a written objection to the Settlement must be in writing and include: (a) the case name and number of the Action; (b) the objector’s full name, signature, address, telephone number, and last four digits of the employee’s Social Security number; (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based. The postmark date will be deemed the exclusive means for determining that the Objection is timely. Class Members who fail to object in the specific and technical manner specified in this Settlement Agreement, or otherwise ordered by the Court, will be deemed to have waived all objections. The Administrator will provide copies of any Objections that it receives to counsel for the Parties within five (5) calendar days of receipt, and Class Counsel will submit copies of the Objections to the Court. Settlement Class Members need not appear at the Final Approval Hearing for their objections to be considered by the Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to object to the Settlement Agreement or to appeal from the final approval order and judgment.

h. Procedure for Requesting Exclusion. Any Class Member wishing to be excluded from the Settlement must submit a timely and complete Exclusion Form (in the form attached hereto as “**Exhibit C**”) or a written letter indicating a request to be excluded from the Settlement (together, “Request for Exclusion”) to the Administrator by mail, postmarked on or before the Response Deadline, or in the case of a re-mailed Notice Packet, the Extended Response Deadline. To be valid, an Exclusion Form must be complete and a written Request for Exclusion must: (a) contain the case name and number of the Action, (b) be signed by the Class Member, (c) contain the full name, address, telephone number, and the last four digits of the Social Security number of the Class Member requesting exclusion, and (d) clearly state that the Class Member does not wish to be included in the Settlement. The date of the postmark on the return mailing envelope on the submission will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Class Member who does not request exclusion from the Settlement will be deemed a Settlement Class Member and will be bound by all terms of the Settlement, if the Settlement is granted final approval by the Court. Any Class Member who validly requests to be excluded from the Settlement will no longer be a Settlement Class Member and will not have any right to object, appeal, or comment on the Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to opt out of the Settlement.

i. Procedure for Disputing Workweeks. Class Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices. In order to dispute Workweeks, Class Members must submit a written letter to the Administrator that: (a) contains the case name and number of the Action, (b) is signed by the Class Member, (c) contains the full name, address, telephone number, and the last four digits of the Social Security number of the disputing Class Member, (d) clearly states that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her, (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her are correct, and (f) is returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline, or in the case of a re-mailed Notice Packet, the Extended Response Deadline. The date of the postmark on the return mailing envelope on the submission will be the exclusive means to determine whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks to be credited to a disputing Class Member, Defendant's records will be presumed correct and determinative of the dispute. However, if a Class Member produces information and/or documents to the contrary, the Administrator will evaluate the materials submitted by the Class Member and the Administrator will resolve and determine the number of eligible Workweeks that the disputing Class Member should be credited with under the Settlement. The Administrator's decision on such disputes will be final and non-appealable.

j. The Administrator will investigate and will have the final decision on disputes as to the Class Members' Workweeks. Any dispute as to the number of Workweeks, request for exclusion, or objection submitted beyond the time period authorized under Paragraph 7.f. will be approved only with the mutual approval of the Parties. The Administrator will provide weekly reports to the Parties regarding the administration status, *i.e.* number of requests for exclusion, objections, and disputes submitted and the current status of any requests for exclusion, objections, or disputes received.

k. Within seven (7) calendar days after the last day for Class Members to object to the Settlement, dispute their Workweeks, or request to be excluded from the Settlement, the Administrator shall provide a declaration to be submitted to the Court detailing the administration process thus far, the number of objections received, the number of requests for exclusion received, the number of disputes submitted, and the final status of all such items.

l. Within seven (7) calendar days after the Court grants final approval of this settlement, the Administrator shall provide the Parties the final calculations of Individual Settlement Shares to Settlement Class Members. The Administrator may redact any identifying information and instead assign an employee value, except leaving the identifying information for the named Plaintiff, such that the Parties can review and approve the final distribution amounts to Settlement Class Members. Within seven (7) calendar days after the Settlement Sum is transmitted to the Administrator, subject to the Parties' approval of the final distribution amounts, the Administrator will mail to Settlement Class Members payment of their *pro rata* share of the Net Settlement Sum. Settlement Class Members shall have one hundred and twenty (120) calendar days to cash their respective settlement checks under this Agreement. Any checks not negotiated within the 120-day period will be voided and will not be reissued.

m. Within one hundred thirty (130) calendar days after the Administrator mails Settlement Class Members payment of their Individual Settlement Share, any unclaimed funds, including

funds from uncashed settlement checks will be paid out in accordance with California Code of Civil Procedure section 384(b) to the Voluntary Legal Services Program – Employment Law Clinic located in Sacramento, California as the *cy pres* beneficiary. The Parties and their counsel each represent that they do not have any financial interest in the *cy pres* or otherwise have a significant affiliation or involvement with the Voluntary Legal Services Program – Employment Law Clinic. The Administrator shall undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the cancellation of any checks. No amount of the Settlement Sum will revert to Defendant for any reason.

n. Within seven (7) calendar days after the Settlement Sum is transmitted to the Administrator, subject to the Parties’ approval of the final distribution amounts, the Administrator shall distribute the awarded Attorneys’ Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, Settlement Administration Costs to the Administrator, and LWDA Payment to the Labor and Workforce Development Agency (“LWDA”).

o. Within ten (10) calendar days after the Administrator distributes the unclaimed funds in accordance with Paragraph 7.k., the Administrator shall provide the Parties with a declaration outlining the settlement administration process and completion of payments to those specified in Paragraph 7.k.

p. The Parties agree that the Class Members’ contact information and Social Security numbers will be used only by the Administrator for the sole purpose of effectuating the Agreement.

8. Class Counsel. The Parties agree to the designation of Lawyers *for* Justice, PC as class counsel for the purpose of effectuating this Agreement.

9. Class Representative. The Parties agree to the designation of Plaintiff Samuel Elliott as the class representative for the purpose of effectuating this Agreement.

10. Scope of the Settlement. The Settlement Sum agreed upon by the Parties contemplates that approximately 36,645 Workweeks will have been worked by the Class Members as of August 19, 2020. To the extent the final number of Workweeks exceeds this number by more than 10%, the Settlement Sum shall be increased by a proportionate amount (i.e. if the number of Workweeks increases by 11%, the total increase to the Settlement Sum will be 1%).

Alternatively, to the extent the final number of Workweeks is more than 10% lower than 36,645, the Settlement Sum shall be reduced by a proportionate amount (i.e. if the number of Workweeks is 11% lower than 36,645, the total decrease to the Settlement Sum will be 1%).

11. Attorneys’ Fees and Costs. Except as otherwise set forth in this Agreement, the Parties agree that they each shall bear their own respective attorneys’ fees and costs incurred in this Action, with the exception of any litigation filed regarding the payment of the Settlement Sum. In the case of any litigation filed regarding the payment of the Settlement Sum, the prevailing party shall be entitled to recover their attorneys’ fees and costs.

12. Enforcement. This Agreement is made and is enforceable in accordance with the provisions of California Code of Civil Procedure section 664.6 and that Parties agree that the Court shall retain jurisdiction for that purpose to effectuate the terms of this Agreement and after entry of judgment in this Action. This Agreement shall be admissible in any proceeding for its enforcement in accordance with sections 1118 and 1123 of the California Evidence Code.

13. Opt-Out Contingency. If more than 10% of the Class Members make valid requests to opt out of the Settlement, Defendant may, in its sole discretion, choose to terminate this Agreement. Defendant shall have five (5) calendar days from the date the Administrator indicates the number of Class Members who opted out to inform Class Counsel in writing of its decision to exercise this option to terminate the Agreement. However, Defendant agrees to pay the cost of the Administrator incurred in administering the Settlement up to the date that Defendant chooses to exercise this option to terminate.

14. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart, when executed, shall have the efficacy of an original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

15. Confidentiality. Plaintiff represents and agrees that he has not and will not issue any press release, publication, or otherwise disclose this Agreement to the press, media, websites, or any service which reports verdicts and settlements. Plaintiff further agrees not to, at any time or in any manner, talk about, write about, disclose, or otherwise publicize or cause to be publicized, the confidential, proprietary, or trade secret information of the Released Parties. Nothing herein will restrict Class Counsel from including publicly available information regarding this settlement in future judicial submissions regarding Class Counsel's qualifications and experience. Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures required to be made to the LWDA in conformity with PAGA.

16. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Action, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

17. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set for below, or such other addresses as either Party may designate in writing from time to time:

To Plaintiff and Class Counsel:

Edwin Aiwanian, Esq.
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

To Defendant:

Douglas D. Turek, Esq.
THE TUREK LAW FIRM
9595 Six Pines Drive, Suite 8210
The Woodlands, Texas 77380

18. Final Judgment. The Parties shall provide the Administrator with a copy of the final Judgment once it is entered by the Court, and the Administrator shall post the final Judgment on its website within three (3) business days of receipt. No individualized notice to the Class will be required.

19. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties will seek the assistance of the Mediator and then the Court to resolve such disagreement.

20. Attorney Liens. Plaintiff represents and warrants that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of the representation of Plaintiff in relation to the Action are Plaintiff's responsibility to pay, and that any liens based on any legal expenses, bills, costs or contingency fee agreements incurred as a result of the Action will be satisfied by the incurring party. Plaintiff will indemnify, defend and hold Released Parties harmless from any such claims.

21. No Additional Recovery. It is the intent of this Agreement that Plaintiff, lienholders, and any other individual or entity with an interest in Plaintiff's claims with respect to payment of the Settlement Sum shall not recover, directly or indirectly, any sums from the Released Parties other than the funds received pursuant to this Agreement and set forth in Paragraph 3. If, despite the provisions of this Paragraph, any Released Party receives any claims, including a claim for contribution, any indemnity arising out of a claim with respect to payment of the Settlement brought against another person in an interest in the claims of Plaintiff, such party shall indemnify, provide a full defense for and hold harmless the Released Parties for such amount. In the event a trier of fact determines (and all appeals are exhausted or the time for such appeals have expired) that any Released Party is or would be liable for indemnity under any theory of law or equity, this Agreement shall act as a general release, releasing not only the Released Party but every other individual, trustee, firm, trust, corporation, or entity of any kind, who is or would be entitled to a defense and indemnity from the Released Parties with respect to any liability that person, firm, or corporation may have to Plaintiff.

22. Entire Agreement. This Agreement sets forth the entire understanding between the Parties and supersedes any and all prior agreements, oral or written, pertaining to the Action. This Agreement may not be modified or amended except in writing, signed by all counsel for the Parties and approved by the Court. Each party acknowledges that there is no representation, inducement, promise or agreement which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

23. California Law Governs. All terms of this Settlement Agreement and attached exhibits hereto will be governed by and interpreted according to the laws of the State of California.

24. Conditional Nature. This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect

whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

March 17, 2021

Dated: _____, 2021



2021-03-17 10:08:05 UTC - 4713811337

SAMUEL ELLIOTT

Dated: ~~March 30~~ March 30, 2021

MED-DATA, INCORPORATED

By: Frank Stellato
Frank Stellato (Mar 30, 2021 38:18 CDT)

Print Name: Frank Stellato

Approved as to form and content:

Title: Chief Financial Officer

Dated: 3/18/2021, 2021



Edwin Aiwarzian
Counsel for Plaintiff and the proposed Class

THE TUREK LAW FIRM, PC

Dated: Mar 31, 2021, 2021



Douglas Turek (Mar 31, 2021 16:11 CDT)

Douglas Turek
Counsel for Defendant

LAWYERS FOR JUSTICE, PC

EXHIBIT A

**IN THE SUPERIOR COURT OF THE STATE CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SAMUEL ELLIOTT, individually and on behalf of other members
of the general public similarly situated,

Plaintiff,

vs.

MED-DATA, INCORPORATED, an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. RIC1901865

**NOTICE OF CLASS ACTION AND
PROPOSED SETTLEMENT**

Department: 6
Judge: Hon. Sunshine S. Sykes

Complaint Filed: March 13, 2019
FAC Filed: [FAC filing date]
Trial Date: None Set

TO: All current and former hourly paid or non-exempt employees who worked for Med-Data, Incorporated in California at any time between March 13, 2015 and August 19, 2020 ("Class Members")

IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY
BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS

A settlement ("Settlement") has been proposed in the lawsuit referenced above, pending in Riverside County Superior Court ("Court") titled *Samuel Elliott v. Med-Data, Incorporated*, Case No. RIC1901865 (the "Case"). If the Court gives Final Approval to the Settlement, Defendant Med-Data, Incorporated ("Defendant") will provide each Class Member a payment calculated, in part, based on the number of weeks worked by each Class Member as set forth in this notice.

Here is a summary of your rights and options, which are described in more detail later in this document. If you have any questions, please contact the Settlement Administrator, Simpluris, Inc. [Simpluris ADDRESS].

1. GENERAL INFORMATION

The Riverside County Superior Court preliminarily approved a settlement of the class action claims asserted by Plaintiff Samuel Elliott ("Plaintiff") in the Case. If you were employed by Defendant within the State of California and were hourly-paid or classified as non-exempt between March 13, 2015 and August 19, 2020, you are eligible to receive payment from the Settlement.

2. YOUR ESTIMATED PAYMENT INFORMATION

According to Defendant's payroll records, you are a Settlement Class Member who worked approximately [estimated Workweeks] Workweeks as an employee in California during the Class Period. Only weeks worked by you during the Class Period as an employee of Defendant may be considered compensable Workweeks under the Settlement. The Class Period is March 13, 2015 through August 19, 2020. Based on information currently available we estimate your total share of the Settlement will be approximately \$[estimated Individual Settlement Share]. This is only an estimate. The amount you ultimately receive as part of the Settlement may increase or decrease in accordance with the terms of the Settlement and the Court's orders.

Defendant respects your right to participate in this Settlement and will take no adverse action against you should you accept payment under the Settlement

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
GET A PAYMENT	If you do nothing, you will automatically receive a payment if the Settlement is finally approved by Court.	N/A
EXCLUDE YOURSELF	If you wish to exclude yourself from the Settlement, you must submit to the Settlement Administrator a valid Request for Exclusion. If you exclude yourself from the Settlement, you will not receive a payment under the Settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Defendant regarding the allegations in the Case. Detailed instructions for this option are set forth in Section 17 below.	Deadline: [Response Deadline]
OBJECT	If you wish to object to the Settlement, you must submit your objections (i.e., why you do not believe the Settlement is fair or adequate) to the Riverside Superior Court and copies must be served on the Settlement Administrator, Plaintiff's counsel, and Defendant's counsel. Submitting an objection does not exclude you from the Settlement. Detailed instructions for this option are set forth in Section 18 below.	Deadline: [Response Deadline]
GO TO THE "FINAL APPROVAL HEARING"	The Court will hold a "Final Approval Hearing" to consider the Settlement, the request for attorneys' fees and costs by the attorneys representing the Class in the Case, and the Representative Plaintiff's request for an enhancement award for bringing and maintaining this action. You may, but are not required to, speak at the Final Approval Hearing about any objection to the Settlement that you submitted. If you intend to speak at the Final Approval Hearing, you must also provide a "Notice of Intention to Appear," indicating your intention to do so.	Hearing Date: [Final Approval Hearing Date]

The Court in charge of this Case has preliminarily approved the Settlement and must decide whether to give Final Approval to the Settlement. The relief provided to Class Members will only be provided if the Court gives Final Approval to the Settlement, and if there are any appeals, after the appeals are resolved in favor of the Settlement. ***Please be patient.***

WHAT THIS NOTICE CONTAINS

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4. Why is there a settlement?	
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BACKGROUND INFORMATION

1. Why did I receive this notice?

You received this Notice because a Settlement has been reached in this Case. According to Defendant's available records you are a member of the Settlement Class and may be eligible for the relief detailed below.

This Notice explains the nature of the Case, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 23 below.

2. What is this lawsuit about?

The Case alleges that Defendant failed to pay overtime wages, failed to provide meal periods, failed to provide rest breaks, failed to pay minimum wages, failed to timely pay wages at separation, failed to timely pay wages during employment, failed to provide accurate wage statements, failed to keep payroll records, failed to reimburse business expenses, committed unfair competition, and violated the California Private Attorneys General Act, and it thus subject to damages under the California Labor Code.

Defendant denies Plaintiff's allegations in their entirety. Defendant contends that it complied with California law, including paying all overtime wages, providing all required meal periods, providing all required rest breaks, paying minimum wages, timely paying wages at separation, timely paying wages during employment, providing accurate wage statements, keeping payroll records, reimbursing business expenses, fairly competing, and complying with all requirements of the California Private Attorneys General Act. Defendant contends that its affirmative defenses to this action may otherwise prevent or limit Plaintiff's class claims.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of the Representative Plaintiff's claims in the Case.

For information about how to learn about what has happened in this Case to date, please see Section 23 below.

3. Why is this a class action?

In a class action lawsuit, a "Representative Plaintiff" (in this Case, Samuel Elliott) sued on behalf of other people who allegedly have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Class Members. The company sued in this case, Med-Data, Incorporated, is called the Defendant.

4. Why is there a settlement?

The Representative Plaintiff made claims against Defendant. Defendant denies that it has done anything wrong or illegal and admits no liability. **The Court has not decided whether the Representative Plaintiff or the Defendant should win in this Case. Instead, both sides agreed to a Settlement.** That way, both sides avoid the cost of a trial, and the Class Members will receive payment now rather than years from now, if at all.

5. How do I know if I am part of the Settlement?

The Court has decided that everyone who fits the following description is a Class Member for purposes of the proposed Settlement: "All current and former hourly paid or non-exempt employees who worked for Med-Data, Incorporated in California at any time between March 13, 2015 and August 19, 2020."

6. I'm still not sure if I am included.

If you are still not sure whether you are included, you can write to the Settlement Administrator for help. The address for the Settlement Administrator is **[SIMPLURIS ADDRESS]**.

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide to the Class Members?

Defendant has agreed to fund a settlement with a maximum value of \$1,565,000 (“Maximum Settlement Amount”). This settlement amount will be used to pay the claims of the Class Members, and the following amounts requested by Plaintiff and subject to Court approval: the cost of providing notice to the Class and administering the Settlement (up to \$25,000); to pay any awards by the Court for attorneys’ fees (up to \$547,750) and costs (up to \$25,000) to Plaintiff’s counsel; and any enhancement award the Court awards to the Representative Plaintiff (up to \$10,000). The estimated Net Settlement Amount to be used to pay the claims of Class Members is approximately \$[estimated Net Settlement Amount].

Your estimated Settlement Payment is stated on the first page of this Notice. Your estimated payment was calculated using Defendant’s payroll and employee records. Individual Settlement Payments will be calculated and apportioned as follows:

- (a) The “Net Settlement Amount” shall be calculated by subtracting the payments for attorneys’ fees and costs to Class Counsel, the enhancement award to the Representative Plaintiff, the administration costs to the Settlement Administrator, and payment of \$75,000 to the California Labor and Workforce Development Agency for penalties under PAGA, from the Maximum Settlement Amount.
- (b) The Net Settlement Amount will be divided up and paid to Participating Class Members on a pro-rata basis based on each Participating Class Member’s total number of “Individual Workweeks” divided by the aggregate Individual Workweeks of all Participating Class Members according to the following formula:
 1. For each Participating Class Member, Defendant will calculate the total number of weeks that the individual worked for Defendant during the Class Period.
 2. The “Individual Settlement Payment” for each Participating Class Member will equal the individual’s Individual Workweeks divided by the aggregate Individual Workweeks for all Participating Class Members multiplied by the Net Settlement Amount.
- (c) For tax purposes, one-third (1/3) of your Individual Settlement Payment shall be allocated as wages, and two-thirds (2/3) shall be allocated as interest, penalties, and other non-wage damages.

PAYMENT TO THE CLASS

8. How can I get a payment?

If you wish to remain a Settlement Class Member and obtain any share of the Settlement to which you may be entitled, then you do not have to do anything and you will automatically receive a settlement payment in the mail if the Court approves the proposed Settlement. You are not required to go to court or pay anything to the lawyers in this case. The Settlement Payment you will receive will be a full and final settlement of your Released Claims described below.

9. When will I get a payment?

As described in Sections 20 and 21, the Court will hold a hearing on [Final Approval Hearing Date] to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. *Please be patient.*

10. What if I disagree with Defendant's calculation regarding my estimated settlement payment?

If you believe that the number of Workweeks with which you have been credited is incorrect, you may produce evidence to the Settlement Administrator by **[Response Deadline]** showing that such information is inaccurate. In order to dispute Workweeks, you must submit a written letter to the Administrator that: (a) contains the case name and number of the Action, (b) is signed by you, (c) contains your full name, address, telephone number, and the last four digits of your Social Security number, (d) clearly states that you dispute the number of Workweeks credited to you AND what you contend is the correct number, (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that you contend should be credited to you is correct. The written dispute must be sent (i.e., postmarked or delivery date stamped) no later than **[Response Deadline]**, and sent to the Settlement Administrator at: Simpluris, Inc., **[SIMPLURIS ADDRESS]**.

The Settlement Administrator shall then decide the dispute between your calculation and that of Defendant. Defendant's records will be presumed to be correct, but the Settlement Administrator will evaluate the evidence submitted by you and will make the final decision as to the merits of the dispute.

11. If I receive a settlement payment will I have to pay taxes on it?

One-third (1/3) of your Individual Settlement Payment shall be allocated as wages, and two-thirds shall be allocated as interest, penalties, and other non-wage damages. You should consult with a tax professional for more information about your own specific situation.

12. No retaliation or discrimination.

Defendant respects your right to participate in this lawsuit and will take no adverse action against you should you accept payment under the Settlement.

THE LAWYERS IN THIS CASE AND THE REPRESENTATIVE PLAINTIFF

13. Do I have a lawyer in this case?

The Court has preliminarily approved Lawyers *for* Justice, PC ("Class Counsel") to represent the interests of all Class Members. You will not be separately charged for these lawyers. If you have a question about the settlement, you may contact Class Counsel by writing to them at 410 West Arden Avenue, Suite 203, Glendale, CA 91203; by emailing them at edwin@calljustice.com; or by calling them at (818) 265-1020. Alternatively, if you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Defendant has agreed to pay Class Counsel's attorney's fees up to \$547,750 and costs of up to \$25,000 for their services in litigating the Case, subject to approval by the Court. You will not be required to pay any attorneys' fees or costs.

15. Will the Representative Plaintiff receive any compensation for her efforts in bringing and maintaining this Case?

The Representative Plaintiff will request an enhancement award of up to \$10,000 for his services as class representative and his efforts in bringing and maintaining this action. The Court will make the final decision as to the amount to be paid to the Representative Plaintiff.

RELEASE OF ALL CLAIMS

16. What am I giving up to obtain relief under the Settlement?

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against Defendant. Specifically, you will release the Released Parties from any and all claims

made, or which could have been made, based on the facts alleged in the First Amended Complaint arising during the Class Period including, but not limited to, any claims for failure to pay wages, failure to pay minimum wages, failure to pay overtime wages, failure to pay hourly wages, failure to pay meal period wages, failure to pay rest period wages, failure to provide rest breaks, failure to provide meal periods, failure to provide accurate wage statements, failure to pay wages upon separation, failure to reimburse business expenses, violations of the California Private Attorneys General Act, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders, violations of California Labor Code §§201, 202, 203, 204, 206, 210, 218.6, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1198, 2698, et seq., 2699, 2800, 2802, California Business and Professions Code §§ 17200, et seq., and all claims for costs, attorney's fees, civil penalties, statutory penalties, premium pay, and liquidated damages related thereto (hereinafter the "Released Claims"). The release shall not extend to any claims outside of the Class Period of March 13, 2015, to August 19, 2020.

The released parties include Defendant Med-Data, Incorporated, MEDNAX Services, Inc., Cardon Healthcare Network, LLC, Alegis Revenue Group, LLC, Diversified Healthcare Services, LLC, and their respective directors, officers, agents, and employees ("Released Parties")

HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT

17. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement (i.e. "opt out"). If you want to be excluded, you must either complete and return the Request for Exclusion Form or send a written request via U.S. Mail or other delivery service to the Settlement Administrator that states: (a) the case name and number of the Case "*Samuel Elliott v. Med-Data, Incorporated*, Case No. RIC1901865"; (b) your full name, address, telephone number, and last four digits of your Social Security number; and (c) a statement that you have received notice of the Settlement and have decided that you do not wish to participate in the Settlement. You must sign the written request for it to be valid. The completed Request for Exclusion Form or written request must be sent (i.e., postmarked or delivery date stamped) no later than **[Response Deadline]**, and sent to the Settlement Administrator at: Simpluris, Inc., **[SIMPLURIS ADDRESS]**.

If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered in the Case, you will not receive an Individual Settlement Share, and you will not be precluded from prosecuting any timely individual claim against Defendant based on the conduct complained of in the Case.

HOW TO OBJECT TO THE SETTLEMENT

18. How do I tell the Court that I do not like the Settlement?

If you do not exclude yourself from the Settlement, you can object to the terms of the Settlement before the Court grants Final Approval. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement.

You may object to the Settlement in writing by either completing and returning an Objection Form or submitting a written statement that contains: (a) case name and number of the Case "*Samuel Elliott v. Med-Data, Incorporated*, Case No. RIC1901865"; (b) your full name, address, telephone number, and last four digits of your Social Security number; and (c) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other documents upon which the objection is based. The completed Objection Form or written request must be sent (i.e., postmarked or delivery date stamped) no later than **[Response Deadline]**, and sent to the Settlement Administrator at: Simpluris, Inc., **[SIMPLURIS ADDRESS]**.

You may, but need not, submit your objection through counsel of your choice. If you make your objection through counsel, you will be responsible for your attorneys' fees and costs.

You may also appear at the Final Approval Hearing at the date, time and location stated in Section 21 below.

If you make an objection and the Court disagrees with your objection and grants Final Approval of the Settlement, you will have released all Released Claims against Released Parties as described in Section 16 above and will receive your Individual Settlement Payment.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS.

19. What is the difference between excluding myself and objecting to the Settlement?

Objecting is telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

FINAL APPROVAL HEARING

20. What is the Final Approval Hearing?

The Court has preliminarily approved the Settlement, meaning only that it concluded that there is sufficient evidence to suggest that the Agreement falls within the range of possible approval as fair, reasonable, and adequate, and that the final determination of these issues will be made at the Final Approval Hearing. The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel and to consider the request for an enhancement award for the Representative Plaintiff.

21. When and where is the Final Approval Hearing?

On [Final Approval Hearing Date], at [Final Approval Time], a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Sunshine Sykes in Department 6 of the California Superior Court, for the County of Riverside, located at 4050 Main Street, Riverside, California 92501. The hearing may be postponed to a different date, time or location without notice. It is not necessary for you to appear at this hearing unless you want to object to the settlement.

22. May I speak at the hearing?

At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to.

ADDITIONAL INFORMATION

23. How do I get more information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Class Action and PAGA Settlement Agreement, which is attached as Exhibit [#] to the Declaration of Edwin Aiwasian in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, filed on [MPA filing date], and other papers which are on file with the Records Management Division of the Riverside County Superior Court, located at the Riverside County Superior Court, Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501. Some documents and information regarding the Action can also be accessed online for free or at a minimal charge at the Riverside County Superior Court's website <http://public-access.riverside.courts.ca.gov/OpenAccess/CivilMainMenu.asp>. To look up and access documents and information on the Court's systems, you will need to use the case number for the Action (RIC1901865).

24. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. You may make corrections to your address by contacting the Settlement Administrator at: Simpluris, Inc., [SIMPLURIS TELEPHONE NUMBER].

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE CLASS LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

SAMUEL ELLIOTT, individually and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

MED-DATA, INCORPORATED, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. RIC1901865

NOTICE OF OBJECTION FORM

Department: 6
Judge: Hon. Sunshine S. Sykes

Complaint Filed: March 13, 2019
FAC Filed: [FAC Filing Date]
Trial Date: None Set

TO: [NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[LAST FOUR DIGITS OF SSN]

USE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE SETTLEMENT.

If you wish to object to the settlement, you must state all grounds for your objection, sign on the following page, and return this form by mail to the Settlement Administrator, at the following mailing address, postmarked on or before [RESPONSE DEADLINE]. Please include copies of any papers, briefs , or other documents upon which your objection is based.

Med-Data Class Action Settlement
Simpluris, Inc.
[INSERT MAILING ADDRESS]

I wish to object to the settlement on the following grounds:

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

SAMUEL ELLIOTT, individually and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

MED-DATA, INCORPORATED, an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

CASE NO. RIC1901865

REQUEST FOR EXCLUSION FORM

Department: 6
Judge: Hon. Sunshine S. Sykes

Complaint Filed: March 13, 2019
FAC Filed: [FAC filing date]
Trial Date: None Set

TO: [NAME]
[ADDRESS]
[TELEPHONE NUMBER]
[LAST FOUR DIGITS OF SSN]

**USE AND RETURN THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF
FROM THE SETTLEMENT.**

If you wish to exclude yourself from the settlement, you must read and sign the following
statement and return this form by mail to the Settlement Administrator, postmarked on or before
[RESPONSE DEADLINE], at the following mailing address:

Med-Data Class Action Settlement
Simpluris, Inc.
[INSERT MAILING ADDRESS]

I request to be excluded from the class action settlement in the matter of *Samuel Elliott v. Med-Data, Incorporated*. By excluding myself from the settlement, I understand that I will not be bound by the settlement and release, that I will not receive an Individual Settlement Share from the settlement.

Date: _____

Signature: _____

If you do not wish to exclude yourself from the settlement, you do not need to take any action. If the proposed settlement receives final approval from the Court, you will receive a check by U.S. Mail.

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE: Elliott v. Med-Data, Inc.	Department 5	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 29 2019 S. Salazar <i>LSB</i>
CASE NO.: RIC1901865		
DATE: March 25, 2019		
PROCEEDING: Class Action Case Management Order #1		

Unless and until ordered otherwise, this Case Management Order (“CMO”) shall govern the management of this case.

BA 2

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A. IN GENERAL

1. The Court finds that this is a complex case. (Cal. Rules of Court, rules 3.400(c)(6) and 3.403(b).) The clerk shall impose fees accordingly. The court will entertain objections to this designation at the next Case Management Conference or status conference.
2. This case has been assigned to Department 5 for all purposes, including case management, law and motion, and trial.
3. The plaintiff shall serve a copy of this CMO on any defendants who have not yet appeared, and shall file proof of service promptly thereafter.
4. Any party who has appeared in the action at the time this CMO is entered has 15 days from the service of the CMO in which to object to the CMO. Any party appearing after the entry of the CMO shall have 15 days from that initial appearance in which to object to the CMO. Any such objections shall be in writing and shall be presented to the Court in the form of a noticed motion to amend the CMO. Any party that fails to file such a motion within those 15 days forfeits its objections to the CMO.
5. If the Court issues an order to show cause why the Court should not take some specified action:
 - a. The party to whom the OSC is directed shall respond with a written declaration filed no later than four court days before the hearing on the OSC. (RSC Local Rule 3116.) The Court may deem the failure to file a timely declaration, by itself, to constitute an admission by the responding party that good cause to avoid the threatened sanction or other action does not exist. (RSC Local Rule 3116.)
 - b. If the order to show cause threatens the imposition of monetary or other sanctions for the violation of a court order or rule, then counsel for the party to whom the OSC is directed must not only file a timely declaration, but must also personally appear in court at the date set for the return of the OSC. (Cal. Rules of Court, rule 3.670(e)(2)(A).)

6. The Court will not grant any relief based on a stipulation of a party that has not yet paid its first-appearance fee.
7. If plaintiff's counsel intends to ask to recover attorney's fees incurred in prosecuting this action, plaintiff's counsel should maintain contemporaneous time records for this case from this date forward, in time increments of no more than a tenth of an hour.
8. Plaintiff's counsel shall consider registering with the clerk's office for fax filing. The Court is unlikely to reimburse counsel for any expenses incurred for a courier to deliver documents to the court for filing that exceed the cost of fax filing, which is currently \$150 per year for unlimited filings.

B. SERVICE AND RESPONSIVE PLEADINGS

1. All defendants named at the time of the filing of this CMO shall be served no later than 30 days, and proofs of service filed no later than 7 days, before the case management conference.
2. Any defendant named after the filing of this CMO shall be served, and proof of service shall be filed, within 60 days of the filing of the pleading, amendment, or amended pleading naming that defendant. (Modifying Cal. Rules of Court, rule 3.110(b).)
3. The power of the plaintiff to grant extensions of time in which to file responsive pleadings is subject to the limits in California Rules of Court, rule 3.110(d), except that the maximum extension by counsel is extended to either 30 days or four court days before the next case management conference, whichever is shorter.
4. If a defendant fails to file an answer or any other responsive pleading within 30 days of service, or within any extension granted by the plaintiff or the Court, the plaintiff must request entry of default not later than 30 days after the time for service of the responsive pleading has elapsed. (Modifying Cal. Rules of Court, rule 3.110(g).)
5. The plaintiff shall serve a copy of this CMO simultaneously with any summons and complaint served after the date of entry of this order.
6. The Court should not be asked to evaluate the sufficiency of a pleading until the pleader has stated his or her case or defense as strongly as possible. Therefore, if a party is considering either an amendment of a pleading or a challenge to an opponent's pleading:
 - a. The parties shall strictly comply with Code of Civil Procedure sections 430.41, 435.5, and 439. Before filing a demurrer, motion to strike, or motion for judgment on the pleadings, the parties shall meet and confer to determine whether the challenge to the pleading is arguably meritorious and, if so, whether the parties will stipulate to leave to amend being granted to allow the pleading to be amended in an attempt to cure the asserted defect.
 - b. Any party who believes that his or her pleading needs to be amended shall meet and confer with the opposing party to discuss whether the amendment is arguably

necessary and whether the opposing party will stipulate to the filing of the amended pleading. Consent to such an amendment shall not be unreasonably withheld.

- c. The parties “shall meet and confer in person or by telephone” (§§ 430.41, subd. (a), 435.5, subd. (a), & 439, subd. (a)) to discuss any arguable defects in the pleadings, and whether those potential defects can be resolved or diminished by amendment. Merely sending a letter or email to opposing counsel does not constitute a meeting, and thus does not comply with this order. Counsel for the moving or demurring party must follow up on any such written communication with an oral request either by telephone or in person.
- d. Any challenge to a pleading, and any motion for leave to amend a pleading, must be accompanied by a declaration describing those meet-and-confer efforts, including the date of the meeting, whether it was in person or by telephone, the persons involved, and the issues discussed. The declaration shall also describe any offer to amend and any response to that offer.
- e. In the absence of evidence of such an effort to meet and confer, the Court may either (i) continue the hearing until such an effort has been made or (ii) take the hearing off calendar and direct the filing of a new motion or demurrer.

C. MEDIATION

The court expects the parties to engage in private mediation at the earliest practicable time, i.e., as soon as all parties have obtained – preferably through informal means – sufficient information from the opposing party(s) to enable them to engage in meaningful mediation.

D. CASE MANAGEMENT AND THE CASE PROGRESSION PLAN

1. The Court finds that this case involves exceptional circumstances that are likely to prevent this case from meeting the goals and deadlines set by California Rules of Court, rule 3.713(b). Accordingly, this case is exempt from those case disposition time goals. (*Id.*, rule 3.714(c)(1).) With the input from the parties, the Court shall develop a case progression plan with the goal of disposing of the case within three years. (*Id.*, rule 3.714(c)(2).)
2. Prior to the first Case Management Conference, counsel for the parties shall meet and confer regarding the joint statement required by RSC Local Rule 3160. Unless counsel have opposed each other in some other case within the last year, that meeting shall be in person.
3. Not later than four court days in advance of the first Case Management Conference, all parties that have appeared shall file the joint statement required by rule 3160 instead of Judicial Council form CM-110 [case management statement]. In addition to the items listed in Rule 3160, the statement shall:

- a. Advise the Court whether any of the parties or their counsel are aware of any other class action, putative class action, or other type of representative or collective action in this or any other jurisdiction that asserts claims similar to those here on behalf of a class, putative class, or other group of individuals that in any way overlaps with the putative class alleged here.
 - b. Describe the parties' case progression plan, which shall include at least (i) a statement as to whether the parties agree to pursue mediation and (ii) a plan of the informal discovery and any formal discovery to be conducted in preparation for mediation, class certification, or both.
4. Not later than four court days before any subsequent Case Management Conference, status conference, or trial setting conference, the parties shall file a joint statement that:
 - a. Describes the status of the case, including (i) the results of any mediation or other settlement efforts, (ii) the degree to which the case progression plan has been implemented and (iii) any changes or additions to the case progression plan; and
 - b. Identifies any issues or concerns that either party wishes to discuss with the Court.
5. If mediation is unsuccessful, the case progression plan shall be expanded prior to the next status conference to include (a) a pre-certification discovery schedule, (b) a deadline for filing a motion for class certification, and a proposed briefing schedule for that motion.
6. Because the Court intends to conduct portions of the Case Management Conference and status conferences informally, in chambers, the lead counsel shall personally appear. Appearance via Court Call is not permitted.

E. DISCOVERY

1. Counsel are encouraged to engage in informal discovery rather than relying on formal discovery. The Court does not stay or otherwise limit informal discovery.
2. The discovery stay under RSC Local Rule 3160(B) is vacated as to interrogatories concerning the identity of and contact information for members of the putative class. Any such interrogatories propounded by the plaintiff to the defendant shall be accompanied by (a) a proposed *Belaire West* notice, (b) the name of a proposed third-party administrator, and (c) a proposal regarding the allocation of the cost of the notice.
3. All other formal discovery concerning class-certification issues is stayed pending further order of the court. Requests for leave to propound formal discovery concerning class-certification issues may be made either by submitting a declaration and proposed order or by making an oral request at status conferences or at informal conferences with the Court in accordance with paragraph 5 below. The Court will grant such a request if the applicant demonstrates:
 - a. That the parties have met and conferred to discuss both (i) the scope and sources of the information needed either to permit a meaningful mediation or to support or

oppose a class-certification motion and (ii) whether the parties would agree to exchange that information informally;

- b. That the parties were unable to reach an agreement; and
 - c. The discovery is reasonably necessary either (i) to permit a meaningful mediation or (ii) to make or oppose a certification motion.
4. All formal discovery concerning solely the merits of the plaintiff's claims (as opposed to whether a class should be certified to prosecute those claims) is stayed until a motion regarding class certification has been granted.
 5. No discovery motions may be filed without leave of court. If a discovery dispute arises:
 - a. The parties shall meet and confer either in person or by telephone in a good-faith effort to resolve the dispute. If, despite that effort, the parties are unable to resolve the dispute, then counsel shall contact the clerk of this department to schedule an informal conference at which the court will discuss the dispute with counsel and, if not resolved to the parties' satisfaction, will consider any request for leave to file a formal motion.
 - b. The conference may be conducted by telephone or in person, as counsel prefer. Prior to the conference, the party seeking relief shall provide the clerk of this department with a brief (two-to-three sentence) description in writing of the reason for the conference. If the conference is to be by telephone, counsel shall also provide the clerk with the call-in telephone number and passcode.
 - c. If the opposing side will not agree to participate in the informal conference, then the moving party shall bring an ex parte application for leave to file a discovery motion.

F. REQUESTS FOR DISMISSAL OF CLASS CLAIMS

If the plaintiff seeks to dismiss or otherwise abandon either the entire action, any cause of action asserted on behalf of the putative class, or any defendant against whom any cause of action is asserted on behalf of the class:

1. Because any such dismissal requires court approval, the plaintiff shall not use the preprinted Request for Dismissal, Judicial Council form CIV-110. Instead, the request shall be made by the submission to the court of (a) a declaration from plaintiff's counsel, (b) a declaration from each named plaintiff, and (c) a proposed order of dismissal.
2. The declarations shall state whether the plaintiff has attempted to settle the plaintiff's individual claims, and if so, the status of those negotiations.
3. The declarations must comply with California Rules of Court, rule 3.770(a), pertaining to any consideration being paid for the dismissal. Because the purpose of that rule is to avoid collusion between the parties to the detriment of the potential class members, the showing must be made by declaration rather than by stipulation.

4. If the dismissal is in exchange for any consideration other than a waiver of costs, the declaration of plaintiff's counsel shall address each of the following:
 - a. What is the form and value of the consideration, and to whom is it to be paid?
 - b. If the consideration is in the form of one or more monetary payments, how were the payments calculated?
 - c. Is the plaintiff required to execute a release in addition to a dismissal? If so, what is the scope of that release?
 - d. How is the retention of that consideration either by the plaintiff or the plaintiff's attorney consistent with their respective fiduciary duties to the class? In particular, if the plaintiff has negotiated a settlement of any individual claim against any defendant separate from the representative claims, and that settlement provides for the payment to any plaintiff of consideration other than a waiver of costs, the declaration shall as to each such individual claim:
 - i. Estimate both (A) the total amount of damages, monetary penalties, attorney's fees and costs, interest, or other relief that the plaintiff would be awarded if the action were entirely successful at trial on that claim, and (B) the total amount of damages, monetary penalties, attorney's fees and costs, interest, or other relief that the plaintiff could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks;
 - ii. Briefly describe the basis for those estimates; and
 - iii. Describe the form and value of the consideration to be paid in satisfaction of that claim.
5. The declarations by plaintiff and plaintiff's counsel shall state (a) whether the declarant has ever informed any of the putative class members – whether formally or informally, orally or in writing, individually or as a group – of the preparation, filing, or pendency of the action, and (b) if so, both (i) the nature and extent of that information and (ii) whether the declarant knows or has a means of discovering the name and mailing address of the putative class member or members to whom that information was communicated.
6. If the dismissal is in exchange for no consideration other than a waiver of costs, the request shall explain the reason for the dismissal. If the reason is that the named plaintiff no longer wishes to prosecute the case on behalf of the putative class:
 - a. The plaintiff shall explain the reason for his or her change of heart. Simply stating that the plaintiff no longer wishes to represent the class is not sufficient.
 - b. The plaintiff's counsel shall explain why counsel wishes to abandon the class claims rather than locate a new class representative.
7. Any request shall explain why the putative class members will not be prejudiced by the requested dismissal.

8. If the complaint alleges any claims under Labor Code section 2699 (PAGA), and the plaintiff intends to dismiss any of those representative claims because the plaintiff has negotiated a settlement of individual claims against any defendant separate from the representative claims, and that settlement provides for the payment to any plaintiff of any consideration (other than a waiver of costs) that is in addition to or instead of PAGA penalties, the plaintiff's counsel's declaration shall describe the information required by section H.9.

G. MOTIONS & APPLICATIONS GENERALLY

1. A party making an ex parte application must, inter alia, "[a]ttempt to determine whether the opposing party will appear to oppose the application." (Cal. Rules of Court, rule 3.1204(a)(2).) That attempt shall be made by telephone. Written notice asking the opposing party to inform the moving party of the opposing party's intentions is not sufficient.
2. A party desiring an order shortening time for notice of a motion shall not bring an ex parte application for such an order until that party has first (a) reserved the earliest available hearing date for the motion and (b) filed the motion. The Court will not deem the ex parte application as constituting the motion to be heard.
3. Any request for relief from a forfeiture of the right to a jury trial must be brought in the form of a noticed motion to be heard not later than the Trial Readiness Conference, or if no TRC is set, then not later than 21 days before the date first set for trial.
4. Any party who obtains an order as a result of any motion, application, stipulation or recommendation filed by that party shall promptly (a) serve a copy of that order on all parties and (b) file a proof of that service with the Court.
5. Any motion or application for relief shall describe any prior motion or application in this case for the same or similar relief, including the name of the party who brought the prior motion or application, the date of the ruling on that motion or application, and the nature of that ruling.
6. Any request to continue a hearing, a case management conference, or a status conference must be (a) labelled as being a request for such relief, (b) supported by a declaration or stipulation establishing the facts that demonstrate good cause for that relief, and (c) accompanied by a proposed order.
7. If the court is asked to take judicial notice of some document already filed with the Riverside Superior Court to support or oppose some motion or application, the request shall state (a) the name and case number of the case in which the document is filed, (b) the full name of the document, and (c) the date on which the document was filed. (Cal. Rules of Court, rule 3.1306(c)(1).) A second copy of the document shall not be attached to the request.

8. Counsel shall not lodge copies of out-of-state authorities to which they have cited unless that authority is not available on Lexis and Westlaw.
9. When offering evidence in support of or in opposition to a motion, no declaration shall be included as an exhibit to any other declaration.

H. MOTIONS FOR PRELIMINARY APPROVAL OF SETTLEMENT

If the matter is settled, a motion for preliminary approval of the settlement must be filed.

1. Settlement Agreements in General

- a. The settlement agreement shall not provide that any order, notice, form, or judgment shall include any provision that this order prohibits from being included in such a document. (See §§ H.3 through H.10 and I, *infra*.)
- b. The settlement agreement shall be written, signed by all necessary parties, and filed, either in the form of a separate stipulation or as an authenticated attachment to a declaration of counsel.

2. Notices of Settlement

Regardless of the terms of the proposed settlement, counsel shall not file a Notice of Settlement of Entire Case (Judicial Council form CM-200).

3. The Motion in General

- a. The motion shall be supported by a declaration from the plaintiff's attorney that, inter alia:
 - i. Sets forth the attorney's estimate of the number of individuals in the class.
 - ii. (A) Sets forth the attorney's estimate of the total amount of damages, monetary penalties or other relief that the class would be awarded on each claim if that claim were entirely successful at trial; (B) explains how that estimate was calculated; and (C) states the collective total for all of the claims.
 - iii. Sets forth: (A) the attorney's estimate as to each claim of the total amount of damages, monetary penalties or other relief that the class could reasonably expect to be awarded at trial, taking into account difficulties of proof, the defendant's defenses, and other attendant risks; (B) the attorney's reasons for those estimates; (C) the likely award at trial for all claims collectively; and (D) both the number of class certification orders that the attorney has obtained following contested certification motions concerning similar claims and the number of trials that the attorney has conducted concerning class or individual actions alleging similar claims.
 - iv. Sets forth the attorney's estimate of the recovery by the average class member if the settlement were approved. If the recovery by different class

members will vary, the attorney shall also estimate the range (high and low) of possible recoveries.

- v. Describes in detail the nature and extent of the formal and informal discovery exchanged and other factual investigation conducted to determine the size of the class and the strength of the class claims.
 - vi. States (A) whether the attorney is aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this action and (B) whether the attorney made reasonable inquiry of other members of the attorney's law firm and any associated law firm to determine whether those individuals are aware of any such similar actions. If any such similar actions are known to exist, the declaration shall also state (C) the name and case number of any such case, the nature of the claims asserted, the definition of the class or other parties on whose behalf the action is brought, and the procedural status of that case.
- b. The motion shall be supported by a declaration from the defendant's attorney that states (i) whether the attorney is aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this action and (ii) whether the attorney made reasonable inquiry of the defendant and of other members of the attorney's law firm and any associated law firm to determine whether the defendant or those individuals are aware of any such similar actions. If any such similar actions are known to exist, the declaration shall also state (iii) the name and case number of any such case, the nature of the claims asserted, the definition of the class or other parties on whose behalf the action is brought, and the procedural status of that case.
- c. The motion shall describe how the value of any uncashed checks, unpaid cash residue, or other unclaimed or abandoned funds will be distributed.
- i. The motion shall describe the intended distribution of unclaimed funds in accordance with Code of Civil Procedure section 384, subdivision (b), and shall explain the reason for choosing proposed recipient as opposed to other potential recipients considered.
 - ii. The motion shall be supported by a declaration from a knowledgeable person from the proposed recipient. The declaration shall:
 - A. Establish that the recipient is a nonprofit organization, foundation, or program of the type described in that subdivision.

- B. Describe the history of the recipient, the types of projects that it has conducted or supported over the last five years, and any particular use to which it would intend to devote the unpaid residue if received.
 - C. Describe the geographic area in which the recipient operates in general, and the nature and extent of the services it provides in Riverside County in particular.
 - iii. The declarations of the attorneys for the plaintiff and for the defendant shall describe both (A) any relationship between the proposed recipient and (1) any class representative or other party, (2) any officer, director, or manager of any party, or (3) any attorney or law firm for any party, and (B) the inquiries the attorney made to determine whether there is any such relationship.
 - iv. The agreement shall not provide that the unclaimed funds be deposited into the Industrial Relations Unpaid Wage Fund. (Lab. Code, § 96.6.) That fund is limited to wages or monetary benefits determined by the Labor Commissioner to be due to an employee after an investigation by the Labor Commissioner, and thus will not accept wages, penalties or interest distributed as part of the settlement of a lawsuit brought by a plaintiff other than the Labor Commissioner.
- d. If the settlement contemplates the use of an administrator to implement the terms of the settlement, the motion shall be supported by:
 - i. A declaration from the plaintiff's attorney, stating whether bids were sought from multiple potential administrators and, if so, the results of that competitive bidding. If the parties did not select the lowest bidder, the declaration shall explain that decision.
 - ii. A declaration from the administrator describing:
 - A. The administrator's experience;
 - B. The fee to be charged by the administrator to perform the services described in the settlement agreement and proposed order;
 - C. Whether that fee is (1) fixed, (2) hourly, or (3) hourly with a cap; and
 - D. How the fee was calculated.
- e. Any release to be given by the participating class members (other than the class representatives) shall be limited to:
 - i. The defendants named in the complaint, together with their officers, directors, employees and agents. If any other parties are sought to be released, the motion shall both (A) identify those other parties by name and (B) explain the facts that justify their inclusion.

- ii. The claims stated in the complaint and those based solely upon the facts alleged in the complaint.
 - iii. Liability that arose during the class period as defined by the settlement agreement.
- f. If notice is not to be given by first class mail to addresses believed to be current, the motion shall discuss the proposed method of giving notice, the alternative methods considered, and the reasons that the proposed method is the one most likely to give actual notice to the greatest number of class members. If the identities of the class members are not known, the parties shall consider publication of notice in print, on the web, at the defendant's place of business, and through social media.
- g. If the settlement requires any of the class members to submit claims:
 - i. The motion shall explain why a claim process is reasonably necessary. If the defendant knows (A) the identity of the class members, (B) their addresses or former addresses, and (C) the facts necessary to calculate the recovery of each class member, the Court will require a strong showing of necessity for a claims process.
 - ii. The motion shall explain the anticipated claims rate, and the basis for that prediction.
- h. If the settlement provides that any portion of the consideration paid or deposited by the defendant may revert to the defendant, the motion shall explain (i) the circumstances under which that reversion would occur, (ii) the maximum amount of any reversion, and (iii) why that reversion is fair.
- i. If the settlement includes compensation for unpaid wages, the motion shall describe how the employer's share of any applicable payroll taxes will be handled. The Court suggests that the employer's share not be paid out of the gross settlement fund. The Court is not likely to include the amount of those payments when calculating the plaintiff's counsel's percentage attorney's fee.
- j. If the amount of the proposed settlement is sought to be justified in part by the assertion that the defendant cannot afford to pay any greater sum, the motion shall be supported by a declaration from plaintiff's counsel or expert describing (i) the date and nature of the defendant's financial records reviewed by the declarant and (ii) the information contained in those financial records that cause the plaintiff to believe that the defendant cannot afford a greater sum. The latter description shall be in sufficient detail to allow the Court to make an independent evaluation of the defendant's ability to fund a larger settlement.
- k. The documents that will be read by or used by the class members – the proposed notice, objection form, exclusion form, and any claim form – shall be drafted in a manner that is likely to be readily understood by the members of the class.

- i. In particular, they shall not contain any Latin terms (such as *et al.* and *et seq.*), any legal terms of art (such as nonexempt and class certification), or any unfamiliar symbols or abbreviations (such as §, LLC, and IWO).
 - ii. To assist the Court in determining whether those documents comply with that directive, the motion shall be supported by a declaration of the defendant on personal knowledge concerning the likely age, education, and experience of the class members, and of their ability to read and comprehend English.
- l. The motion shall be accompanied by a separately filed document entitled “Compliance Chart” that shall consist of two columns. One column shall separately list each requirement prescribed by each paragraph or sub-paragraph of sections H.1 and H.3 through H.10 of this order. The other column shall describe – by document name and page and line numbers – where in the moving papers the corresponding requirement is satisfied.

4. The Proposed Order

- a. The motion shall be accompanied by a separate proposed order which shall include, as attachments to the order, the proposed notice (Cal. Rules of Court, rule 3.769(e)), proposed exclusion form, proposed objection form, any proposed claim form, and any other form that is proposed to accompany the notice. The Court is likely to modify those proposed forms. Therefore, the Court will not issue an order that merely incorporates by reference the forms attached to the settlement agreement.
- b. The settlement agreement shall not be attached to the order.
- c. Counsel shall carefully review both the terms and the terminology of the order and accompanying forms (notice, objection form, exclusion form, and any claim form) to confirm that the various documents are internally consistent, consistent with each other, and consistent with the settlement agreement.
- d. The order shall state the name of any settlement administrator, and shall describe the nature of the services that the administrator will be required to perform, either directly or by reference to the settlement agreement.
- e. The order shall provide that the notice shall be accompanied by an exclusion form that the class members may use. The order shall provide that any exclusion form shall be submitted to the settlement administrator rather than filed with the court. The order shall not require the class member to send copies of the exclusion form to counsel, but may require the settlement administrator to do so. The order shall provide that the settlement administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every exclusion form received by the administrator.
- f. The proposed order shall provide that the notice shall be accompanied by an objection form that the class members may use. The order shall provide that any objection shall be submitted to the settlement administrator rather than filed with

the court. The order shall not require the class member to send copies of the objection form to counsel, but may require the settlement administrator to do so. The order shall provide that the settlement administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every objection form received by the administrator.

- g. Neither the order, the notice, nor the objection form shall require an objecting party to do either of the following, either personally or through counsel:
 - i. To appear at the hearing on the motion for final approval for that party's objection to be considered.
 - ii. To file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for final approval.
- h. The order shall require that either counsel or the administrator must give notice to any objecting party of any continuance of the hearing of the motion for final approval.
- i. Neither the order nor the notice shall purport to enjoin the class members from filing any actions or administrative claims or proceedings pending the final hearing on the settlement, or for any other period.
- j. If notice is to be given by mail, and if the class members will be required to submit a claim form, the order shall provide:
 - i. That the notice be accompanied by a stamped envelope addressed to the claims administrator; and
 - ii. That the claims administrator be required to send a reminder notice to every class member from whom no claim or exclusion request is received within 30 days of mailing the notice.

5. The Proposed Notice

- a. The notice shall include an estimate of the likely recovery by the individual class member to whom the notice is sent, if known. If it is not known, the notice shall include an estimate of the likely recovery by the average class member. If the recovery by different members will vary, the notice shall also include an estimate of the range of possible recoveries.
- b. To avoid discouraging any dissenting class members from objecting to the proposed settlement, the notice shall clearly indicate that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.
- c. The notice shall advise the class members of where they can find the settlement agreement, by describing (i) the full title and filing date either of the settlement agreement or of the declaration or other document to which the agreement was

attached when filed with the Court, (ii) the address of the courthouse to which the case is assigned, and (iii) the address of the court's website at which the case file can be viewed on-line.

- d. Neither the notice nor the documents enclosed with it shall describe any settlement administrator as the "claims administrator" unless the class members are required to submit claims.
- e. The notice shall include a description of any release being given by the class members.

6. The Proposed Claim Form

The information required to be provided by the class member on any claim form shall not exceed the minimum information necessary to (a) identify the claimant, (b) process the claim, and (c) contact the claimant to clarify any uncertainties.

7. The Proposed Objection Form

- a. The objection form shall (i) instruct the objecting class member that the objection must be mailed or delivered to the settlement administrator, (ii) state the name and address of the settlement administrator, and (iii) state the date by which the objection must be mailed or otherwise delivered.
- b. The information required to be provided by an objecting class member on the objection form shall not exceed the minimum information necessary to (i) identify the objector as a person entitled to object to the settlement, (ii) describe the nature of and basis for the objection, and (iii) contact the objector to clarify any uncertainties.
- c. If a claim must be submitted to participate in the settlement, the objection form shall remind the objector that, to participate in the settlement in the event that the objection is overruled, the objector must also submit a claim.

8. The Proposed Exclusion Form

- a. The exclusion form shall (i) instruct the class member seeking exclusion that the exclusion form must be mailed or delivered to the settlement administrator, (ii) state the name and address of the settlement administrator, and (iii) state the date by which the exclusion form must be mailed or otherwise delivered.
- b. The information required to be provided by a class member on the exclusion form shall not exceed the minimum information necessary to (i) identify the person as a class member and (ii) contact the person to clarify any uncertainties.

9. PAGA Penalties

- a. If the action includes a claim for statutory penalties under the Labor Code Private Attorney General Act of 2004 ("PAGA"), the motion shall explain the terms of any settlement of that claim.

- b. If the settlement provides for the payment of penalties under PAGA, the motion shall be accompanied by a declaration describing how the penalties were calculated and otherwise establishing facts sufficient to allow the Court to review and approve those penalties as required by Labor Code section 2699, subdivision (l). In particular, the declaration shall explain:
 - i. The nature of the alleged violations.
 - ii. The number of alleged individual violations, including both the length of the relevant employment period and the number of employees allegedly employed during that period.
 - iii. The total amount of penalties for which the defendant is potentially liable were those allegations to be proven.
- c. If the agreed-upon amount of PAGA penalties is less than the statutory maximum, the declaration shall explain why greater penalties would be unjust, arbitrary and oppressive, or confiscatory. (Lab. Code, § 2699, subd. (e)(2); *Amaral vs. Cintax Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213-1214.) In particular, the declaration shall explain:
 - i. The extent to which the alleged violations would be likely to be found true at trial, considering the weight of the evidence, the clarity of the applicable law, and the strength of any factual or legal defense likely to be asserted by the defendant.
 - ii. The nature and extent of the discovery or other investigation undertaken by the plaintiff to estimate the likelihood of proving those allegations at trial.
 - iii. The likelihood that any violations would be proven to have been knowing and intentional.
 - iv. The total amount of penalties for which the defendant would be likely to be found liable at trial.
 - v. Any facts that tend to suggest that the imposition of the total amount of statutory penalties for which the defendant would be likely to be found liable at trial would be unjust, arbitrary and oppressive, or confiscatory.
 - vi. How the amount of the agreed-upon penalties was calculated or otherwise arrived at.
 - vii. Whether the parties utilized the services of any neutral party to mediate this dispute.
 - viii. Any other factors that are material to a determination that the amount of the agreed-upon penalties is fair.

10. Revised Documents

If the Court either denies the motion or continues the hearing on the motion, and if the plaintiff thereafter files any amended settlement agreement, order, notice or form in support of either that motion or a renewed motion, the plaintiff shall file a declaration authenticating a “red-lined” version of the amended document, showing how the earlier version was modified.

I. MOTIONS FOR FINAL APPROVAL OF A SETTLEMENT

If a motion for preliminary approval is granted, the plaintiff must thereafter move for final approval of the settlement.

1. The order granting preliminary approval will set the date for the hearing on the plaintiff’s motion for final approval. Promptly after the entry of that order, the plaintiff shall reserve a law and motion hearing on the date set in the order.
2. Any request for a “service,” “enhancement,” or “incentive” payment to a named class representative shall be supported by a declaration from the proposed recipient in which the declarant:
 - a. Describes the services performed by the declarant to further the prosecution of the action;
 - b. Estimates the time incurred by the declarant in performing those services;
 - c. Describes any risks assumed by the declarant in prosecuting the action;
 - d. Describes any adverse consequences actually suffered by the declarant as a result of prosecuting the action;
 - e. Describes any benefits received by the declarant as a result of prosecuting the action;
 - f. Describes the nature and amount of any expenses incurred by the declarant to further the prosecution of this action;
 - g. Describes the nature and value of any individual claims being released by the declarant, and explains how that value was calculated;
 - h. States whether the declarant is or was a named class representative in any other case, pending or closed, and if so, identifies any such case; and
 - i. States the amount that the declarant expects to receive as a class member.
3. Any request for compensation for attorney’s fees in a case that does not result in the creation of a common fund shall be supported by a lodestar analysis. Any request for an attorney-fee award measured as a percentage of a common fund shall be supported by a lodestar analysis as a cross-check for the reasonableness of such a percentage award. In either case, the lodestar analysis shall be supported by a declaration that:

- a. Authenticates copies of the contemporaneous time records maintained by the plaintiff's attorneys for the services performed in this case. If no contemporaneous time records were maintained, then the declaration shall state that fact, and shall (i) explain why no such records were kept, (ii) state the date on which legal services were provided, (iii) describe in detail the nature of those services, (iv) estimate the time incurred in performing those services, and (v) describe the basis for that estimate.
 - b. Describes both (i) the hourly rate or rates customarily charged by each attorney for that attorney's time during the period in which those services were performed, and (ii) the attorney's experience and expertise that justify such a rate. The declaration shall state whether the attorney has clients that pay that rate, and if so, the percentage of the attorney's clients that do so. If the attorney works exclusively on a contingency basis, the declaration shall explain the basis for the hourly rate assigned to that attorney's work.
 - c. States whether there is a fee-splitting agreement between plaintiff's counsel and any other attorney or law firm. If so, the declaration shall identify the other attorney or law firm, shall describe the terms of that agreement, and shall state whether the named plaintiff has approved that agreement in writing. (See Cal. Rules of Court, rule 3.769(b).)
4. Any request for compensation for expenses incurred by the plaintiff's attorneys shall be supported by a detailed declaration or other evidence describing the date, nature, and amount of each expense incurred. In particular:
 - a. Any travel expenses shall identify the mode of travel (e.g., by car, taxi, airplane, etc.), the starting point, the destination, and the number of persons making the trip.
 - b. Any expenses for overnight accommodations shall explain the necessity for staying overnight and the number of persons doing so.
 - c. Any request for filing fees shall distinguish between court filing fees and fees for a courier or attorney's service to deliver the documents to be filed to the court.
 - d. Any expense related to a motion for preliminary approval that was denied because of the plaintiff's failure to comply with the CMO, or to a hearing on such a motion that was continued for such a failure, shall be omitted.
5. The motion shall be accompanied by a declaration from the settlement administrator. That declaration shall:
 - a. Describe both (i) the administrator's distribution of the notice, objection form, exclusion form, and any claim form, and (ii) the results thereof. If claims are required, the declaration shall describe the number of claims received and the total value of the claims. The declaration shall clearly distinguish between valid forms and any forms that are untimely, incomplete, or otherwise invalid.

- b. Attach and authenticate (i) a copy of the final version of the notice and of all forms enclosed with it, including the objection form, the exclusion form, and any claim form, (ii) a copy of every objection form received, and (iii) a copy of every exclusion form received. If the reasons stated on any objection form are in a language other than English, the administrator shall include a translation into English.
 - c. Describe (i) the services performed by the administrator to the date of the declaration, (ii) the time and expenses incurred to perform those services, and (iii) either the fee charged for those the services or the agreed-upon flat fee.
 - d. Describe (i) the services to be performed by the administrator after the date of the declaration, (ii) the estimated time and expenses needed to perform those services, and (iii) either the estimated fee for those the services or the agreed-upon flat fee.
6. If the settlement includes compensation for unpaid wages, and if the employer's share of the payroll taxes is to be paid out of the settlement funds, the motion shall be supported by a declaration estimating the amount of those taxes.
7. The motion shall be accompanied by a proposed judgment or, if counsel prefer, a proposed combined order and judgment.
8. The judgment shall require that:
- a. Any envelope transmitting a settlement distribution to a class member shall bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED."
 - b. Any settlement distribution check shall be negotiable for at least 90 days but not more than 180 days from the date of mailing.
 - c. The administrator shall mail a reminder postcard to any class member whose settlement distribution check has not been negotiated within 60 days after the date of mailing.
 - d. If (i) any of the class members are current employees of the defendant, (ii) the distribution mailed to those employees is returned to the administrator as being undeliverable, and (iii) the administrator is unable to locate a valid mailing address, the administrator shall arrange with the defendant to have those distributions delivered to the employees at their place of employment.
9. The first reference in the judgment to the settlement agreement shall include a statement of (a) the title of the settlement agreement, (b) the date the agreement was filed, and (c) the name of the document to which the agreement was attached, if any.
10. The judgment shall state the names of any class members who excluded themselves from the settlement, if any.
11. If multiple law firms represent the plaintiff, the judgment shall separately state the fees and expenses to be paid to each firm.

12. If the settlement agreement provides for the distribution of any funds to a *cy pres* recipient, the judgment shall state the recipient's name and address, and shall describe the circumstances under which funds would be paid to that recipient.
13. The judgment shall not:
 - a. Expose the class members to a potential contempt charge by barring or otherwise enjoining the class members from prosecuting the released claims.
 - b. Include a provision that the class members shall be deemed to have agreed not to sue on any released claims, or any other provision that may expose the class members to potential liability for either breach of contract or misrepresentation.
 - c. Provide for the dismissal of the action. (Cal. Rules of Court, rule 3.769(h).)
14. The judgment may restrict the plaintiff and the defendant from offering the settlement agreement into evidence in actions between each other, but shall not purport to prevent other parties from doing so or to otherwise predetermine its admissibility in litigation involving third parties.
15. If the Court either denies the motion for final approval or continues the hearing on the motion, and if the plaintiff thereafter files any amended proposed order or judgment, or other document in support of either that motion or a renewed motion, the plaintiff shall file a declaration authenticating a "red-lined" version of the amended document, showing how the earlier version was modified.

J. MOTIONS REGARDING CLASS CERTIFICATION

1. No motion for class certification or to deny class certification shall be filed without leave of court. Before leave to file such a motion is requested, the Court expects the parties to have exhausted efforts to mediate a resolution of the case.
2. At the time that the Court grants leave of court to file either a motion for class certification or a motion denying class certification, the Court will also establish a briefing schedule and will set a status conference on a date after the reply brief is due. At the status conference, the Court will determine the date on which the motion will be heard. The hearing date may be far enough in the future to allow for further mediation. If the Court fails to set such a status conference, the hearing date reserved by the moving party shall be far enough in the future to extend the briefing schedule prescribed by California Rules of Court, rule 3.764(c)(1) by 3 calendar days; i.e., the motion shall be filed and served at least 31 calendar days before the hearing date, the opposition at least 17 calendar days before, and reply at least 8 calendar days before.
3. If multiple classes or subclasses are alleged, the motion shall address the issues of definition, ascertainability and numerosity separately as to each class or subclass.
4. If multiple class representatives are proposed, the motion shall address the issues of typicality and adequacy of representation separately as to each representative.

5. If multiple class claims are alleged, the motion shall address the issue of whether common questions of law and fact predominate separately as to each such claim.
6. A motion for class certification shall include:
 - a. A trial plan that explains how the plaintiff will establish a prima facie case at trial. If the plaintiff intends to rely upon statistical evidence to prove any portion of any class claim, the plan shall describe that evidence and how it will be used to promote manageability. If the defendant has raised any affirmative defenses that rely upon individual evidence, the plan that explains how those defenses can be litigated.
 - b. A declaration of proposed class counsel, describing his or her experience in representing a class at trial.

K. TRIAL

1. If the Court declares that a party has forfeited its right to a jury trial, that party shall not post jury fees until that party has obtained relief from that forfeiture.
2. Any request for relief from a forfeiture of the right to a jury trial must be brought in the form of a noticed motion to be heard not later than 21 days before the trial readiness conference, or if no TRC is set, then not later than 21 days before the date first set for trial.

L. JUDGMENTS

Whether issued after trial or after final approval of a settlement, any judgment shall comply with the following:

1. The judgment shall describe both the text of the notice of entry of judgment to be given to the class members (Cal. Rules of Court, rule 3.771(b)), the party or person required to give that notice, and the manner in which that notice is to be given.
2. If the judgment provides for payments to class members:
 - a. The judgment shall describe the intended disposition of any uncashed checks or other cash residue, including the name and address of the recipient.
 - b. The judgment shall set a deadline for the filing of a report concerning uncashed checks or other cash residue and shall identify the party or person responsible for filing that report. That deadline shall be after the deadline for the class members to negotiate their checks.
 - c. The judgment shall require the report to be in the form of a declaration from the settlement administrator or other declarant with personal knowledge of the facts, and to describe (i) the date the checks were mailed, (ii) the total number of checks mailed to class members, (iii) the average amount of those checks, (iv) the number of checks that remain uncashed, (v) the total value of those uncashed checks, (vi)

the average amount of the uncashed checks, and (vii) the nature and date of the disposition of those unclaimed funds.

- d. If Code of Civil Procedure section 384.5 is applicable, the judgment shall require the report to be accompanied by a proposed amended judgment that complies with that section.

M. FAILURE TO COMPLY

1. If it appears that any attorney or party has violated any provision of this order, the Court may issue an order to show cause why monetary sanctions should not be imposed upon that attorney or party in an amount not to exceed \$1,500. (Code Civ. Proc., § 177.5; Cal. Rules of Court, rule 2.30(b).)
2. If the plaintiff's counsel fails to comply with the provisions of this order concerning motions for preliminary approval or final approval of a proposed settlement, with the result that final approval of the settlement is unnecessarily delayed, then the Court may reduce the attorney's-fee award to plaintiff's counsel to compensate the class members for the interest lost during the delay and to deny compensation to the attorney for that deficiency in the attorney's services. That reduction may be in the amount of \$1,500 or more for every motion that fails to comply with this order.

N. OTHER

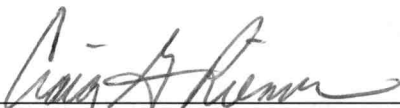
___ The Case Management Conference currently scheduled for ___, 2019, is advanced or continued to ___, 2019, at 8:30 A.M. in Department 5.

___ The status conference currently set for ___, 2019, is vacated.

___ This CMO #2 entirely supersedes CMO #1, filed ___.

___ The defendant having failed to pay the jury fees required by Code of Civil Procedure section 631, subdivision (b), within the time required by subdivision (c), that party has forfeited its right to a jury trial.

___ The plaintiff's complaint does not comply with California Rules of Court, rule 3.761(b) regarding Class Action Allegations. No later than ___, 2019, the plaintiff shall file an amended complaint that fully complies with that rule.



Craig G. Riemer, Judge of the Superior Court