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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KEVIN WYATT and KIMBERLEE
CALIFANO, individuals, and on behalf of all
persons similarly situated,

Plaintiffs,

v.

BH-SD OPCO, LLC, dba ALVARADO
PARKWAY INSTITUTE BEHAVIORAL
HEALTH SYSTEMS, a Delaware Limited
Liability Company; and DOES 1-50, Inclusive,
Defendant.

Case No: 37-2021-00021168-CU-OE-CTL

**DECLARATION OF THE HON. JUDGE
MITCHEL R. GOLDBERG (RET.) IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: July 26, 2024

Time: 9:30 a.m.

Judge: Hon. Gregory W. Pollack
Dept.: C-71

1 I, Hon. Judge Mitchel R. Goldberg (Ret.), declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am a retired U.S. Bankruptcy Judge.
4 I have examined financial information both as a judge from 1988 to 2008 and as a private mediator
5 dealing with complex financial matters since 2009.

6 2. This declaration is being submitted in support of Plaintiffs' motion for Preliminary
7 Approval of Class and PAGA Action Settlement. I am making this declaration based on my own first
8 hand knowledge, except as to those matters declared on information and belief, of which I have been
9 informed of and do believe, if called upon to do so, I could and would competently testify to the matters
10 set forth herein.

11 3. In April 2023, I was contacted by mediator Francis J. Ortman III to assist both parties in
12 conducting a financial analysis of the Defendant BSD OPCO, LLC et al to analyze an "ability to pay"
13 dynamic that was impacting the negotiations on the matter. The scope of my engagement was to provide
14 an objective, independent analysis of the financial condition of BD-SD and provide an opinion of the
15 range of amount and under what terms that it could afford to pay to resolve this matter without a
16 significant disruption of its business based on its current financial condition.

17 4. In furtherance of my financial analysis I was provided with the following documents
18 (collectively "Defendants financials")

19 A 2019-2022 Tax returns

20 B 2019 -2022 financial statement (Income and Balance sheet reports

21 C. 2019-2021 Audited financial reports

22 D. Up to date financials for 2023.

23 5. I had several calls with counsel for Defendant and calls with financial representatives of the
24 company. I was provided further information to my questions, including loan documents with
25 its lender, and a cash flow analysis of its operations as of July 2023.

26 6. Upon my review of the records and information provided I presented my analysis to both
27 counsel and to Mr. Ortman who used my information to complete this settlement negotiation in
28 August 2023

1 7. My sole role in this matter was to conduct an objective financial condition analysis of
2 Defendants. My analysis was solely on an economic ability to perform without liquidation by
3 using a model that considers insolvency proceedings as a modality based on ability to pay over
4 time. I did not serve as an evaluative mediator of the factual and legal disputes; though I am sure
5 there were issues both sides had to consider, but the “driver” of this mediation was the economic
6 analysis I performed. It is my opinion that I was provided with sufficient financial information
7 to render a narrow range of suggestions to make a limited range work economically and the
8 ultimate settlement the parties approved with Mr. Ortman’s guidance fit within the range of my
9 suggestions.

10
11 I declare under the penalty of perjury under the laws of the State of California that the foregoing
12 is true and correct. Executed this 1st day of July 2024, at Yorba Linda, California.

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14 By: 
15 Hon. Judge Mitchel R. Goldberg (Ret.)
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