

AEGIS LAW FIRM, PC

SAMUEL A. WONG State Bar No. 217104

KASHIF HAQUE State Bar No. 218672

JESSICA L. CAMPBELL, State Bar No. 280626

FAWN F. BEKAM, State Bar No. 307312

fbekam@aegislawfirm.com

9811 Irvine Center Drive, Suite 100

Irvine, California 92618

Telephone: (949) 379-6250

Facsimile: (949) 379-6251

Attorneys for Plaintiffs Stacie Horton, individually,
and on behalf of all others similarly situated.

JEFFREY S. HORTON THOMAS (SBN 1313413)

CODY T. STROMAN (SBN 303413)

STEVEN WONG (SBN 293343)

FOX ROTHSCHILD LLP

345 California Street, Suite 2200

San Francisco, CA 94104-2670

Telephone: 415.364.5540

Facsimile: 415.391.4436

Attorneys for Defendant

HEALTHSTAT WELLNESS, INC.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STACIE HORTON, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

EVERSIDE HEALTH, LLC; HEALTHSTAT
WELLNESS, INC.; and DOES 1 through 20,
inclusive,

Defendants.

Case No. BCV-21-101366

*Assigned for all purposes to:
Hon. Bernard C. Barmann, Dept. 10*

JOINT STIPULATION OF SETTLEMENT

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Stacie Horton (“Named Plaintiff”)
7 and the Class Members, on the one hand, and Defendant Healthstat Wellness, Inc. (“Defendant”), on
8 the other hand. Named Plaintiff and Defendant collectively are referred to in this Agreement as “the
9 Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of Four Hundred Fifty Thousand
12 Dollars (\$450,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”) pursuant
13 to the terms and conditions of this Agreement and for the consideration set forth herein, including
14 but not limited to, a release of all claims by Named Plaintiff and the Class Members as set forth
15 herein.

16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “Action” means the actions described as follows: *Stacie Horton v. Everside Health,*
21 *LLC, et al.*, Case No. BCV-21-101366, commenced on June 16, 2021, in the Superior Court of the
22 State of California for the County of Kern, and *Stacie Horton v. Everside Health, LLC, et al.*, Case
23 No. BCV-21-102008, commenced on August 30, 2021, in the Superior Court of the State of
24 California for the County of Kern.

25 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
26 Exhibit(s).

c. “Class” means all current and former non-exempt employees who are or were employed by Defendant in California at any time during the Class Period.

d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

AEGIS LAW FIRM, PC
Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Fawn F. Bekam
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

e. “Class List” means a list based on Defendant’s business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. “Class Member(s)” means all members of the Class.

g. “Class Period” means June 16, 2017 through July 19, 2022.

h. “Court” means the California Superior Court for the County of Kern, where the Action is currently pending.

i. “Date of Finality” means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final.

j. “Defendant” means Defendant Healthstat Wellness, Inc.

k. “Defense Counsel” means counsel for Defendant:

FOX ROTHSCHILD LLP
Jeffrey S. Horton Thomas
Cody T. Stroman

Steven Wong
345 California Street, Suite 2200
San Francisco, CA 94104-2670
Telephone: 415.364.5540
Facsimile: 415.391.4436

l. “Disposition” means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

n. “Gross Settlement Amount” means Four Hundred Fifty Thousand Dollars and Zero Cents (\$450,000.00) to be paid by Defendant as provided by this Agreement to settle this Action. All payments to the Class, administration costs, attorney’s fees and costs, and Incentive Awards, pursuant to Section 3.06(a) below, shall be paid out of the Gross Settlement Amount. The employer’s share of payroll taxes arising from the payments made under this settlement shall be paid by Defendant separate from and in addition to the Gross Settlement Amount. The Gross Settlement Amount is subject to a pro rata increase pursuant to Section 3.04(e) below. No part of the Gross Settlement Amount shall revert to Defendant.

o. “Incentive Award” means a monetary amount of up to Ten Thousand Dollars (\$10,000.00) for the Named Plaintiff, subject to Court approval, in recognition of her effort and work in prosecuting the Action on behalf of Class Members, and for their general release of claims.

p. “Individual Settlement Payment(s)” means each Participating Class Member’s respective share of the Net Settlement Amount. Individual Settlement Payments will be determined by the calculations provided in this Agreement.

q. “LWDA” means The State of California Labor and Workforce Development Agency.

8 t. “Motion for Preliminary Approval” means Plaintiffs’ submission of a written motion,
9 including any evidence as may be required for the Court to grant preliminary approval of the
0 Settlement as required by Rule 3.769 of the California Rules of Court.

v. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved administration costs, Class Counsels’ attorney’s fees and costs, Incentive Awards and LWDA Payment, pursuant to Section 3.06(a)-(f) below.

x. “Notice Packet” means the Notice of Proposed Class Action Settlement in a form substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

y. “PAGA” means the California Private Attorneys General Act of 2004, which is codified in California Labor Code §§ 2698 *et seq.*

z. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties have agreed that the PAGA Settlement Amount is Twenty Thousand Dollars (\$20,000), subject to Court approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the

1 remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
2 Members.

3 aa. "PAGA Group Members" means all Class Members employed by Defendant at any
4 time between June 15, 2020 through July 19, 2022 ("PAGA Period").

5 bb. "Participating Class Member(s)" is defined as a Class Member who does not timely
6 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
7 Settlement Amount automatically without the need to return a claim form. Each Participating Class
8 Member will be paid his/her Individual Settlement Payment.

9 cc. "Preliminary Approval Date" means the date the Court preliminarily approves the
10 Settlement embodied in this Agreement.

11 dd. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
12 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
13 Administrator for the benefit of Participating Class Members.

14 ee. "Qualifying Workweeks" means the number of weeks that Class Members worked
15 for Defendant as non-exempt employees during the Class Period.

16 ff. "Released Parties" means Defendant and any of its former and present or any of its
17 current or past predecessors, successors, affiliates, subsidiaries, parent companies, employees,
18 insurers, agents, consultants, legal representatives, and any other related entities, and each of their
19 past, present and future officers, shareholders, owners, members, directors, partners, agents,
20 managers, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest,
21 and underwriters.

22 gg. "Response Deadline" means the deadline by which Class Members must postmark or
23 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
24 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by
25 the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
26 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.

Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

hh. "Settlement Administration Costs" means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed checks, and generation of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for her Incentive Award, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

ii. "Settlement Administrator" means Phoenix Settlement Administrators, which the Parties have agreed will be responsible for the administration of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation of Class Certification for Settlement Purposes

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the Class as to Defendant will be vacated and Named Plaintiff, Defendant, and the Class will be returned

1 to their positions with respect to the Action as if the Agreement had not been entered into. In the
2 event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving
3 certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall
4 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
5 this Agreement, the fact that Defendant did not oppose the certification of a Class under this
6 Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used
7 or cited thereafter by any person or entity, including in any manner whatsoever, including without
8 limitation any contested proceeding relating to the certification of any class. If the Date of Finality
9 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
10 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
11 reserves the right to challenge the propriety of class certification in the Action for any purpose, if the
12 Date of Finality does not occur.

13 The Parties and their respective counsel shall take all steps that may be requested by the Court
14 relating to the approval and implementation of this Agreement and shall otherwise use their
15 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
16 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
17 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
18 resolution, the Parties agree to seek the assistance of the Court to resolve the dispute.

19 ARTICLE III

20 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

21 The procedure for obtaining Court approval of and implementing this Agreement shall be as
22 follows:

23 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

24 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the
25 Class to include all claims pled in the Action based on the preliminary approval of this Agreement.

1 The date that the Court grants preliminary approval of this Agreement will be the “Preliminary
2 Approval Date.”

3 **Section 3.02: The Settlement Administrator**

4 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement and
5 to act as the Settlement Administrator, including but not limited to distributing and responding to
6 inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net
7 Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement
8 Payment checks and distributing them to Participating Class Members, establishing and maintaining
9 the QSF, and issuing the payment to Class Counsel for attorneys’ fees and costs, the Incentive Award
10 check to Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The
11 Settlement Administrator shall expressly agree to all of the terms and conditions of this Agreement.

12 All costs of administering the Settlement, including but not limited to all costs and fees
13 associated with preparing, issuing and mailing any and all notices to Class Members and/or
14 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
15 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
16 returns and any other filings required by any governmental taxing authority or agency, all costs and
17 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
18 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
19 incurred and/or charged by the Settlement Administrator in connection with the execution of its
20 duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement
21 Administrator from the Gross Settlement Amount.

22 **Section 3.03: Notice to Class Members**

23 No later than five (5) business days after the Preliminary Approval Date, Defendant will
24 provide the Settlement Administrator with a “Class List” in electronic format based on its business
25 records, identifying the names of the Class Members, their last known home addresses, Social
26

1 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
2 and weeks worked during the Class Period.

3 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
4 Administrator will send Class Members, by first-class mail, at their last known address, the Court
5 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
6 Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate
7 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
8 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
9 Settlement Administrator will check all Class Member addresses against the National Change of
10 Address database and shall update any addresses before mailing. The Settlement Administrator will
11 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
12 Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall
13 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
14 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
15 Members shall not be required to submit claim forms in order to receive a proportional share of the
16 Net Settlement Amount.

17 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
18 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
19 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
20 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
21 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
22 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
23 that reasonable means be used to locate Class Members and that the Settlement Administrator be
24 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
25 Individual Settlement Payments to all Participating Class Members.

1 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
2 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
3 status report provided to the Parties.

4 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
5 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
6 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
7 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
8 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
9 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
10 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
11 procedures set forth in Section 3.06(g) below.

12 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
13 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
14 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
15 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
16 exclusion and objections that the Settlement Administrator received.

17 **Section 3.04: Responses to Notice**

18 **a. Class Member Disputes**

19 If any Class Member disagrees with Defendant's records as to his or her Qualifying
20 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
21 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
22 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
23 supporting documentation. The Notice will also provide a method for the Class Member to challenge
24 the employment data on which his or her Individual Settlement Payment is based. The Settlement
25 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
26 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the

final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on the information provided to it.

b. Requests for Exclusion from Class

In order for any Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will not be entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon. Except, however, that no Class Member can request an exclusion from the portion of this Settlement attributable to PAGA penalties.

Any Class Member who fails to timely submit a request for exclusion shall automatically be deemed a Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action and/or released in this Agreement will be extinguished.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)

1 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
2 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
3 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
4 the date the signed objection was postmarked, shall be conclusively determined according to the
5 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
6 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
7 Members may also appear at the final approval hearing to object. The Court retains final authority
8 with respect to the consideration and admissibility of any Class Member objections.

9 **d. Encouragement of Class Members**

10 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
11 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
12 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
13 Class Members.

14 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

15 Defendant has estimated the number of Class Members as 82 and the number of Qualifying
16 Workweeks as 9,037. If the number of Class Members increases by more than 10% (which is more
17 than 91 Class Members and 9,941) as of the end of the Class Period, there will be a pro rata
18 adjustment to the Gross Settlement Amount equal to \$4,945.95 per additional class member and/or
19 \$45.26 per additional Qualifying Workweek.

20 **Section 3.05: Final Fairness and Approval Hearing**

21 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
22 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
23 and determine whether the Court should give it final approval, and (2) consider any objections made
24 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
25 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
26 Proposed Final Order Approving Settlement of Class Action.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of Four Hundred Fifty Thousand Dollars (\$450,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement Amount, and the Incentive Payments.

Within sixty (60) calendar days after the Court signs the Final Order, Defendant shall transfer the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administer to be deposited and distributed. The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Awards, the LWDA Payment, and the Settlement Administration Costs.

Within ten (10) court days after receiving Defendants' final payment, funding the Gross Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the Incentive Awards, and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00). Class Counsel shall submit an

1 application for an award of costs not to exceed Ten Thousand Dollars (\$10,000.00). Such application
2 for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing.
3 Defendant shall not object to or oppose any such application in these amounts. Class Counsel shall
4 serve Defendant with copies of all documents submitted in support of their application for an award
5 of attorneys' fees and costs.

6 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
7 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
8 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
9 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
10 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
11 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
12 will be reallocated to the Net Settlement Amount.

13 **c. Payment of Settlement Administration Costs**

14 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
15 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Six
16 Thousand Dollars (\$6,000.00).

17 **d. Payment of Incentive Award to Named Plaintiff**

18 Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Ten
19 Thousand Dollars (\$10,000.00), the request for which Defendant will not object to or oppose. The
20 Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute payment
21 to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court
22 approves less than the amount of the Incentive Award that Class Counsel request, the difference
23 between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

24 Because it is the intent of the Parties that the Incentive Award represents payment to Named
25 Plaintiff for her service to the Class Members, and not wages, the Settlement Administrator will not
26 withhold any taxes from the Incentive Awards. The Incentive Awards will be reported on a Form

1099, which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing authorities as required by law.

e. Payment to the Labor and Workforce Development Agency

In consideration of claims made under PAGA, Class Counsel will request that the Court approve allocation of Twenty Thousand Dollars (\$20,000) of the Gross Settlement Amount to these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the Action, will not invalidate this Agreement.

f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class Member's approximate Individual Settlement Payment amount will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 20% allocated to wages; 70% allocated to interest, and 10% allocated to penalties.

1 The amounts paid as wages shall be subject to all tax withholdings customarily made from an
2 employee's wages and all other authorized and required withholdings and shall be reported by W-2
3 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement
4 Amount. The amounts paid as penalties and interest shall be subject to all authorized and required
5 withholdings other than the tax withholdings customarily made from employees' wages and shall be
6 reported by IRS 1099 forms.

7 No later than ten (10) business days after receiving the Gross Settlement Amount from
8 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
9 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the
10 Net Settlement Amount allocated to wages will be reduced by applicable employer and employee
11 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
12 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the
13 extent required by law for the interest and penalty portions of the Individual Settlement Payments.
14 Participating Class Members shall have 180 days from the date their Individual Settlement Payment
15 checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration
16 of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller
17 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

18 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
19 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
20 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
21 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
22 Settlement Administrator is unable to obtain a valid mailing address through this process, the
23 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
24 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

25 **g. Default on Payment.**

1 Defendant's failure to fund the Gross Settlement Amount within ten (10) calendar days after
2 the date that the Court grants final approval of the Settlement shall be considered a default. In the
3 event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will
4 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed
5 payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to
6 the Settlement Administrator. In the event Defendant fails to cure the default within the times set
7 forth herein, Named Plaintiff may elect to enter judgment against Defendant, on an ex parte basis,
8 for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiff will be entitled
9 to recover interest at ten percent (10%) per year from the due date for such payment and reasonable
10 attorneys' fees and costs.

11 **h. No Credit Toward Benefit Plans.**

12 The Individual Settlement Payments made to Participating Class Members under this
13 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
14 calculate any additional benefits under any benefit plans to which any Class Members may be
15 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
16 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
17 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
18 Members may be entitled under any benefit plans.

19 **ARTICLE IV**

20 **LIMITATIONS ON USE OF THIS SETTLEMENT**

21 **Section 4.01: No Admission**

22 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
23 Class should not have been certified in the Action. This Agreement is entered into solely for the
24 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
25 construed as an admission of liability or wrongdoing by Defendant.

Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or used to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceedings in the Action, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims through this Agreement.

The Parties have agreed to the certification of the Class encompassing all claims alleged in this Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason certify this Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had never been entered into nor filed with the Court; and (iv) the fact that the Parties were willing to enter into a Settlement in lieu of class certification of all causes of action pled in the Action as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether the Class should be certified by the Court in a non-settlement context in this Action or any other action, and in those events, Defendant expressly reserves the right to oppose certification of the Class.

In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the Gross Settlement Amount shall not be distributed pending the completion of the appeal.

ARTICLE V**RELEASES****Section 5.01: Released Claims by Class Members**

Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiff and Participating Class Members who do not opt out of the Settlement, release the Released Parties from any and all claims alleged in Named Plaintiff's Operative Complaint, during the Class Period, including but not limited to (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize or permit rest periods; (5) failure to furnish accurate itemized wage statements wage statement violations; (6) failure to pay wages upon separation of employment and within the required time; (7) violation of California Business and Professions Code §§17200, *et seq.*, based on the preceding claims ("Released Claims").

Section 5.02: Released Claims by PAGA Group Members

Upon the date of funding the GSA, the State of California and PAGA Group Members release the Released Parties from all claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged in the operative complaint, which arose during the PAGA Period, regardless of whether PAGA Group Members opt out of the Class Settlement.

Section 5.03: Named Plaintiff's Release of Unknown Claims

Upon the date of funding the GSA, Named Plaintiff, waives, releases, acquits, and forever discharges the Released Parties from any and all claims, actions, charges, complaints, grievances, and causes of action, of any nature arising from Named Plaintiff's employment with Defendant, whether known or unknown, which exist or may exist as of the Parties' execution of this Agreement.

Section 1542 of the California Civil Code 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."

1 Named Plaintiff's general release provided herein is made with an express waiver and
2 relinquishment of any claim, right, or benefit under California Civil Code § 1542.

3 **ARTICLE VI**

4 **MISCELLANEOUS PROVISIONS**

5 **Section 6.01: Amendments or Modification**

6 The terms and provisions of this Agreement may be amended or modified only by an express
7 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
8 and approved by the Court.

9 **Section 6.02: Assignment**

10 None of the rights, commitments, or obligations recognized under this Agreement may be
11 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
12 consent of each other Party and their respective counsel. The representations, warranties, covenants,
13 and agreements contained in this Agreement are for the sole benefit of the Parties under this
14 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

15 **Section 6.03: Governing Law**

16 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
17 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
18 of laws.

19 **Section 6.04: Entire Agreement**

20 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
21 contains the entire understanding of the Parties with respect to the subject matter contained herein.
22 In case of any conflict between text contained in Articles I through VI of this Agreement and text
23 contained in the Exhibits to this Agreement, the former (i.e., Articles I through VI) shall be
24 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
25 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
26 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement

1 supersedes all prior agreements and understandings among the Parties with respect to the settlement
2 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
3 prior agreements or proposals.

4 **Section 6.05: Waiver of Compliance**

5 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
6 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
7 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
8 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
9 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
10 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

11 **Section 6.06: Counterparts and Fax/PDF Signatures**

12 This Agreement, and any amendments hereto, may be executed in any number of counterparts
13 and any Party and/or their respective counsel may execute any such counterpart, each of which when
14 executed and delivered shall be deemed to be an original. All counterparts taken together shall
15 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
16 signature.

17 **Section 6.07: Meet and Confer Regarding Disputes**

18 Should any dispute arise among the Parties or their respective counsel regarding the
19 implementation or interpretation of this Agreement, a representative of Class Counsel and a
20 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
21 to submitting such disputes to the Court.

22 **Section 6.08: Agreement Binding on Successors**

23 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
24 of each of the Parties.

1 **Section 6.09: Cooperation in Drafting**

2 The Parties have cooperated in the negotiation and preparation of this Agreement. This
3 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
4 was the drafter or participated in the drafting of this Agreement.

5 **Section 6.10: Fair and Reasonable Settlement**

6 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
7 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
8 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
9 further believe that the Settlement is and is consistent with public policy, and fully complies with
10 applicable law.

11 **Section 6.11: Headings**

12 The descriptive heading of any section or paragraph of this Agreement is inserted for
13 convenience of reference only and does not constitute a part of this Agreement and shall not be
14 considered in interpreting this Agreement.

15 **Section 6.12: Notice**

16 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
17 communications under this Agreement must be in writing and addressed as follows:

18 *To Named Plaintiff and the Class:*

19 AEGIS LAW FIRM, PC
20 Samuel A. Wong
21 Kashif Haque
22 Jessica L. Campbell
23 Fawn F. Bekam
24 9811 Irvine Center Drive, Suite 100
25 Irvine, California 92618
26 Telephone: (949) 379-6250
27 Facsimile: (949) 379-6251

28 And

To Defendant:

FOX ROTHSCHILD LLP
Jeffrey S. Horton Thomas
Cody T. Stroman
Steven Wong
345 California Street, Suite 2200
San Francisco, CA 94104-2670
Telephone: 415.364.5540
Facsimile: 415.391.4436

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
se Counsel warrants that they are authorized by Defendant, to take all appropriate action
ed to effectuate the terms of this Agreement, except for signing documents, including but not
d to this Agreement, that are required to be signed by the Parties themselves. Defendant
ents and warrants that the individual executing this Agreement on its behalf has the full right,
, and authority to enter into this Agreement and to carry out the transactions contemplated

The Parties have made such investigation of the facts and the law pertaining to the matters covered herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted interests, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

The Parties and their counsel hereby execute this Agreement.

By: 8564359D5E5D448...
Named Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: September 2, 2022

HEALTHSTAT WELLNESS, INC.

By: 
(Signature)
Michi Tsuda
(Printed Name)
General Counsel
(Title)

APPROVED AS TO FORM ONLY:

Dated: 1/25/2023

AEGIS LAW FIRM, PC


By: _____
Jessica L. Campbell
Namrata Kaur
Attorneys for Named Plaintiff Stacy Horton

Dated: September 2, 2022

FOX ROTHSCHILD LLP

By: 
Jeffrey S. Horton Thomas
Cody T. Stroman
Steven Wong

Attorneys for Defendant Healthstat
Wellness, Inc.