

Settlement Agreement and Release of Claims

This Settlement Agreement and Release of Claims (“Settlement Agreement”) is entered into by: **(1)** Joseph McCabe (“Plaintiff”), and **(2)** Behavior Respite in Action, Inc. and Z & S Management Corporation (“Defendants”). Plaintiff and Defendants are collectively referred to as the “Parties” or individually as “Party.”

Recitals

- A.** Plaintiff has filed an action against Defendants, currently pending in the Superior Court for the County of Los Angeles, entitled *Joseph McCabe v. Behavior Respite in Action, Inc., et al.*, Case No. 21STCV30219 (“Action”). The Action is currently plead as a representative action brought pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
- B.** In the Action, Plaintiff has sought recovery PAGA penalties against Defendants for **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the applicable IWC Wage Order(s); **(2)** failure to pay proper overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the applicable IWC Wage Order(s); **(3)** failure to provide compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7 and the applicable IWC Wage Order(s); **(4)** failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174; **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210; **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; **(8)** failure to reimburse business expenses in violation of Labor Code sections 2802 and 2804; **(9)** failure to provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3; **(10)** deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); **(11)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and **(12)** all claims for penalties, interest, fees, costs based on the foregoing.
- C.** Defendants deny all claims set forth in in the Action.
- D.** To avoid further controversy and litigation of this matter, and without admission of any liability, fact, claim, or defense by any Party, the Parties wish to settle all disputes now existing between them on terms and conditions set forth below.

Agreement

Pursuant to the terms and conditions of this Settlement Agreement, which all Parties acknowledge as fair, reasonable, and adequate and in their mutual best interests, the Parties agree to settle all claims and finally resolve all disputes between the Parties as follows:

1. **Settlement Amount.** In exchange for the promises and releases contained in this Settlement Agreement, Defendants will pay to Plaintiff the gross settlement amount of \$10,000.00 (“Settlement Amount”) made payable as follows:
 - a. One check in the amount of \$7,040.93 made payable to “Joseph McCabe” and sent to the office of Plaintiff’s counsel, representing non-wage damages, for which Joseph McCabe will receive an IRS Form 1099.
 - b. One check in the amount of \$2,959.07 made payable to “Melmed Law Group P.C.” and sent to the office of Plaintiff’s counsel, for attorneys’ fees and costs, for which Plaintiff’s counsel will receive an IRS Form 1099.
2. **Timing and Delivery of Payments.** Within five calendar days of the date on which all Parties have executed this Settlement Agreement, Plaintiff and Plaintiff’s counsel shall provide to Defendants all necessary tax forms (including completed IRS Form W-9s for Plaintiff and Plaintiff’s counsel). Within ten calendar days of the date on which all Parties have executed this Settlement Agreement and Plaintiff and Plaintiff’s counsel have provided Defendant all necessary tax forms, Defendants shall mail the checks described above to:

Melmed Law Group P.C.
1801 Century Park East
Suite 850
Los Angeles, California 90067

3. Plaintiff’s Release and Waiver of Claims

- (a) ***Plaintiff’s General Release and Waiver of Claims.*** In consideration for the promises set forth in this Agreement and for the Settlement Amount, Plaintiff hereby irrevocably and unconditionally – for himself and for his heirs, representatives, attorneys, executors, administrators, successors, and assigns – releases, acquits, and forever discharges the Defendants and all their respective owners, affiliates, related companies, subsidiaries, divisions, parents, including but not limited to their members, managers, investors, shareholders, officers, directors, partners, servants, agents, employees, representatives, attorneys, insurers, bankruptcy trusts, past, present, and future, and all persons acting under, by, through, or in concert with any of them, and each of

them, (all of whom are hereinafter referred to as “**Releasees**”), from any and all claims, demands, actions, causes of action, grievances, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts, and benefits (including attorneys’ fees and costs actually incurred), of whatever character, in law or in equity, known or unknown arising prior to the execution of this Agreement (collectively, the “**Released Claims**”). This Release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of action, obligations, charges, liabilities, damages, penalties, attorneys’ fees and costs relating to, arising out of, or based upon claims as set forth in the Action; claims of retaliation in violation of State or Federal law and/or violations of the Business and Professions Code; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing, including but not limited to, promissory fraud; all claims for unpaid wages or other benefits; all claims for emotional distress; all claims for equitable relief; any and all claims which were or could have been asserted in the Action; and all claims generally relating to or arising out of Claimant’s employment, working relationship, and/or separation of employment from the Company, including any alleged violation of any federal, state, or other governmental statute, regulation or ordinance, including without limitation:

(i) Anti-Discrimination Statutes, such as the California Fair Employment and Housing Act (the “**FEHA**”), Cal. Gov. Code §§ 12940 *et seq.*, which prohibits discrimination in employment based on race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, marital status, veterans status, sexual orientation, sex or age; Cal. Lab. Code § 923 and § 1102.5, which prohibit retaliation against an employee for engaging in protected activity; Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866 and Executive Order No. 11246, which prohibit discrimination based on race, color, national origin, religion or sex; the CalEPA (Cal. Lab. Code § 1197.5); the Americans With Disabilities Act (the “**ADA**”) and Section 503 and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against the disabled;

(ii) California Labor Code, Wage Orders, and Related Statutes and Regulations, such as Cal. Lab. Code §§ 200 *et seq.*, relating to salary, commission, compensation, meal and rest breaks, benefits and other matters, penalties for alleged failure to timely pay all final wages, and penalties for alleged failure to provide accurate itemized wage statements; Cal. Lab. Code §§ 510, 1194, and 1198

relating to overtime compensation; Cal. Lab. Code § 512, relating to meal and rest breaks; Cal. Lab. Code §§ 2698 *et seq.* relating to civil penalties for alleged violations of other sections of the Cal. Lab. Code or of provisions of any applicable Industrial Welfare Commission Wage Order; California Industrial Welfare Commission Wage Order 4-2001 (codified at 8 Cal. Code Regs. § 11040), or any other applicable Wage Order; and Cal. Bus. & Prof. Code §§ 17200 *et seq.*;

(iii) Federal Employment Statutes, such as the Worker Adjustment and Retraining Notification Act (the “**WARN Act**”), which requires that advance notice be given of certain work force reductions; the Employee Retirement Income Security Act of 1974 (the “**ERISA**”), which, among other things, protects pension or health plan benefits; and the Fair Labor Standards Act of 1938 (the “**FLSA**”), which regulates wage and hour matters; and

(iv) Other Laws, such as the California Family Rights Act (the “**CFRA**”), the Family Medical Leave Act (the “**FMLA**”), California Occupational Safety and Health (the “**CalOSHA**”) or the federal equivalent (the “**OSHA**”); the Families First Coronavirus Response Act (the “**FFCRA**”), and any federal, state or local laws restricting an employer’s right to terminate employees or otherwise regulating employment; or enforcing express or implied employment contracts or requiring an employer to deal with employees fairly or in good faith; and any other federal, state or local laws, whether based on statute, regulation, common law or Constitution, providing recourse for alleged wrongful discharge, physical or personal injury, emotional distress, fraud, unfair competition, negligent misrepresentation, libel, slander, defamation and similar or related claims.

(b) The Parties understand and acknowledge that Plaintiff’s general release and waiver of claims excludes, and Plaintiff does not waive, release, or discharge: (i) any right to file an administrative charge or complaint with, or testify, assist, or participate in an investigation, hearing, or proceeding conducted by the Equal Employment Opportunity Commission (the “**EEOC**”), the California Department of Fair Employment and Housing (the “**DFEH**”), or other similar federal, state, or local administrative agencies, although Claimant waives any right to monetary relief related to any filed charge or administrative complaint; (ii) claims that cannot be waived by law, such as claims for unemployment benefit rights and workers’ compensation; (iii) any right to file an unfair labor practice charge under the National Labor Relations Act (the “**NLRA**”); and (v) and any obligation to testify or participate in any legal proceeding when

legally mandated to do so by subpoena or valid order of a court of competent jurisdiction or an authorized government agency.

- (c) The Parties further acknowledge and agree that California Labor Code Section 206.5 is not applicable to the resolution of this matter. That section provides in pertinent part as follows:

“No Company shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wage has been made.”

In connection with the foregoing, Plaintiff acknowledges, agrees, represents and warrants to the Releasees, and each of them, that at all times relevant to Plaintiff's employment with and/or separation of employment, and upon the execution and performance of this Agreement, Plaintiff has been fully and properly and timely paid for all time worked.

4. **Defendants' Release.** In exchange for the promises and covenants warranted and guaranteed by Plaintiff by way of this Agreement, the Defendants release, acquit and discharge Plaintiff, and his heirs, personal representatives, administrators, successors, and assigns (collectively, the **"Released Parties"**) from any claims, expenses, debts, demands, costs, contracts, liabilities, obligations, actions and causes of action of every nature, including those of tort, contract, or statute, whether known or unknown, whether in law or in equity, which the Defendants had or have or may claim to have had by reason of any and all matters with respect to Plaintiffs, including, but not limited to, those arising out of Plaintiff's employment and separation from employment with the Defendant.
5. **Release of Unknown Claims.** As further consideration for the releases being provided, the Parties expressly waive any right or benefit available to them under the provisions of California Civil Code section 1542, which 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.”

Notwithstanding anything to the contrary in this Settlement Agreement, the releases described do not apply to claims arising from workers' compensation laws or any rights which, by law, may not be waived. Moreover, nothing in this Agreement shall be deemed to prohibit the Parties from participating or cooperating with any governmental or law

enforcement agency in any investigation, administrative proceeding, or action involving any other Party.

6. **Dismissal of Action.** In return for the consideration provided in this Settlement Agreement, Plaintiff agrees to dismiss with prejudice Plaintiff's *individual* claims in the Action. Plaintiff, having resolved all individual claims against the Released Parties, agrees that Plaintiff is no longer a suitable PAGA representative and therefore releases his right to act as a representative plaintiff in a PAGA action and agrees to not file any future PAGA representative actions against the Released Parties. To the extent there are any remaining PAGA claims in the Action, Plaintiff agrees to dismiss those claims *without* prejudice. Within seven calendar days of the date the Settlement Amount is received by Plaintiff's counsel and all checks have cleared, Plaintiff shall file a request for dismissal as outlined above in the Action and provide Defendants with a copy of the signed request for dismissal at that time. Plaintiff agrees to do all things necessary to effectuate the complete dismissal of Plaintiff's claims in the Action.
7. **No Consideration for Class or Representative Claims.** The Parties acknowledge that this Settlement Agreement includes fair and reasonable consideration for the settlement of Plaintiff's *individual* claims. Plaintiff is entering this Settlement Agreement solely in an individual capacity, and not in any capacity as a participant of any future PAGA action. All consideration under this Settlement Agreement provided to Plaintiff is for Plaintiff's release of individual claims against the Released Parties and his statutory right to serve as a Private Attorney General for the State of California, as defined above. Plaintiff, having resolved all individual claims against the Released Parties, agrees that Plaintiff is no longer a suitable PAGA representative and agrees to not file or participate in any future class or representative actions against any Released Parties for any claims arising out of or in any way connected with Plaintiff's employment by Defendants and any and all transactions, occurrences, or matters between the Parties occurring prior to the date of this Settlement Agreement, unless otherwise required by law.
8. **Attorneys' Fees and Costs.** Except as provided in this Settlement Agreement, the Parties shall bear their own costs, expenses, and attorneys' fees. The Parties further agree to not seek to recover their costs, expenses, and attorneys' fees from any other Party incurred in or arising out of or in any way related to the matters released in this Settlement Agreement, except for those costs and attorneys' fees as specifically stated herein.
9. **Non-Disparagement and Neutral Reference.** Plaintiff agrees to refrain from making or soliciting comments, statements, or the like to the media or to others that may be considered to be derogatory or detrimental to their good name and/or business reputation with respect to the Defendants. This provision shall not prohibit the Parties from giving truthful responses or testimony in any legal or regulatory proceeding or inquiry when mandated

or required to do so under the powers of a judicial or administrative judge or arbitrator. Defendants agrees to include a memorandum in Plaintiff's employment file indicating that should anybody contact the Defendants pertaining to Plaintiff's employment-related inquiry, other than one based on a subpoena or other process of law compelling testimony, Defendants, and/or any of its agents shall disclose only the following: confirmation of Plaintiff's employment, position(s) held, and dates of employment.

10. **Covenant to Effectuate Agreement.** Each Party agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Settlement Agreement.
11. **Disclaimer of Liability.** Nothing in this Settlement Agreement shall constitute or be construed as an admission of liability or wrongdoing by the Parties. The Parties expressly deny that they have done anything wrong or unlawful.
12. **Confidentiality.** The terms of this Settlement Agreement shall be confidential. The Parties agree to not make any public statement about and not disclose to any third party the fact of, or contents, or terms of this Settlement Agreement, unless necessary to implement or enforce its terms or to seek tax or legal advice regarding this Settlement Agreement. Plaintiff may disclose information about this Settlement Agreement to Plaintiff's immediate family or Plaintiff's financial, tax, and legal advisors. Plaintiff will not disclose any information about this Settlement Agreement or the Settlement Amount made pursuant to this Settlement Agreement, to any current or former employee of Defendants. It is agreed that in the event of a breach of the provisions of this Section 12 by Plaintiff, it would be impractical or extremely difficult to fix actual damages to Defendant. Therefore, Plaintiff agrees that in the even of such a breach, Plaintiff shall pay to Defendant, as liquidated damages and not as a penalty, the sum of ONE THOUSAND EIGHT HUNDRED DOLLARS AND ZERO CENTS (\$1,800.00) per breach, which represents reasonable compensation to Defendant for the loss incurred because of such a breach.
13. **Return of Company Property/Information; Pre-Existing Agreements.**
 - a. Within seven (7) calendar days of Plaintiff's execution of this Agreement, Plaintiff will return all of Defendant's documents and property currently in Plaintiff's possession.
 - b. Plaintiff acknowledges and agrees that in the course of Plaintiff's employment with Defendant (and/or its affiliates), Plaintiff has acquired (i) confidential information including without limitation information received by Defendant from third-parties, under confidential conditions; (ii) other technical, product, business, financial, or development information from Defendant, the use or disclosure of which reasonably might be construed to be contrary to

the interest of Defendant; or (iii) other proprietary information or data, including but not limited to Protected Health Information (“PHI”), customer lists, which Plaintiff may have acquired during Plaintiff’s employment (hereafter collectively referred to as “Company Information”). Plaintiff understands and agrees that such Company Information was disclosed to Plaintiff in confident and for use only by Defendant.

- c. Plaintiff affirms that Plaintiff has not divulged any proprietary or confidential information of Defendant, including but not limited to PHI, as of Plaintiff’s execution of this Agreement. Plaintiff also understands and agrees that Plaintiff (i) will continue to keep such Company Information confidential at all times; (ii) will not disclose or communicate Company Information to any third-party, and (iii) will not make use of Company Information on Claimant’s own behalf, or on behalf of any third-party. All, except to the extent permitted by this Agreement.
- d. The Parties acknowledge and agree that the terms and conditions set forth in the HIPAA Compliance Agreement and the Arbitration Agreement signed by Plaintiff (hereinafter collectively “Preexisting Agreements”) shall in no way be altered, modified, enhanced, diminished, or amended by this Agreement, and that the Preexisting Agreements stand alone, operate individually, and shall be enforced separately without reference to or effect by the Agreement.
- e. The undertakings set forth in this Section 12 shall survive the termination of this Agreement or other arrangements contained in this Agreement.

- 14. **No Representation of Tax Liabilities.** No Party, including the attorneys for any Party, has made any representations or warranties regarding whether the Settlement Amount is subject to taxation. No Party shall bear any responsibility for tax liability of any other Party that may arise because of the payment of the Settlement Amount. Each Party agrees to assume any responsibility for payment of taxes for any of the Settlement Amounts. Each Party agrees to hold all other Released Parties harmless from any and all tax liability which may become due as a result of the payment of the Settlement Amount under this Settlement Agreement.
- 15. **No Prior Assignments.** The Parties represent that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or any interest therein against any other Party.
- 16. **Binding Nature.** This Settlement Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns of Plaintiff, and inure to the benefit of Defendants,

Defendants' agents, managers, members, officers, employees, servants, successors, and assigns.

17. **Consultation with Counsel.** The Parties affirm that, prior to execution of this Settlement Agreement, they have consulted with their respective legal counsel concerning the terms and conditions set forth herein, and that they understand the advice provided to them.
18. **Severability.** Should any clause of this Settlement Agreement be found void by a court of law, with the exception of the requirement that Defendants pay Plaintiff and Plaintiff's counsel the Settlement Amount, that fact shall not impair the remainder of this Settlement Agreement.
19. **Interpretation.** This Settlement Agreement has been jointly negotiated and drafted by counsel for the Parties. The language in this Settlement Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties. This Settlement Agreement shall be interpreted according to the laws of the State of California.
20. **Counterparts.** This Settlement Agreement may be executed in identical counterparts, each of which shall constitute an original of this Settlement Agreement. Signatures of the Parties may be exchanged electronically and shall be treated as an original.
21. **Amendment.** This Settlement Agreement may not be modified, altered, or changed, except in writing and signed by the Parties.
22. **Entire Agreement.** This Settlement Agreement contains all the terms and conditions agreed on by the Parties regarding the subject matter of this Settlement Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Settlement Agreement, not expressly set forth in this Settlement Agreement, are of no force or effect.
23. **ADEA Release, Consideration and Review and Revocation Period.**
 - a. Plaintiff hereby forever releases and discharges the Released Parties from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that Plaintiff had, now has, or may hereafter claim to have against the Released Parties under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621-634) ("**ADEA**") arising out of or relating in any way to Plaintiff's hiring by, employment with, or separation from the Company or otherwise relating to any of the Released Parties from the beginning of time through the Effective Date;
 - b. Plaintiff acknowledges that prior to signing this Agreement Plaintiff had no less than twenty-one (21) days during which to consider the

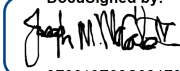
provisions of this Agreement. If Plaintiff signs this Agreement before the end of the twenty-one (21) day period, Plaintiff acknowledges and agrees that Plaintiff has voluntarily and knowingly waived the remainder of this twenty-one (21) day period;

- c. Plaintiff acknowledges that he fully understands all of the provisions of this Agreement and that it is written in a manner that Plaintiff understands;
- d. Plaintiff acknowledges that he was advised in writing to consider the terms of this Agreement and consulted with an attorney of Plaintiff's choosing prior to signing this Agreement;
- e. Plaintiff understands that rights or claims under the ADEA that may arise after the date this Agreement is signed are not waived; and
- f. Plaintiff understands that Plaintiff has a period of seven calendar days after the date Plaintiff signs this Agreement to revoke the Agreement by delivering a written notification by certified mail and email addressed to apolishuk@polsinelli.com, and Plaintiff is hereby further advised that this Agreement shall not become enforceable until this seven day revocation period has expired without Plaintiff having exercised this right of revocation ("Effective Date").

Approval and Execution by the Parties

Plaintiff:

Dated: 11/10/2022

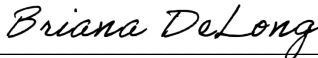
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Joseph McCabe
Plaintiff

Defendants:

Dated: 11/23/22

Behavior Respite in Action, Inc.
Z & S Management Corporation



By: Briana DeLong

Title: General Counsel