

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) of claims brought under the Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”), is made and entered into between Plaintiff Patrick O’Beirne, acting in his capacity as private attorney general, and Defendants Insperity Support Services, L.P. and Insperity, Inc., doing business as Insperity (collectively, “Defendants”).

I. DEFINITIONS

The following terms, when used in this Settlement, will have the following meanings:

1. “Action” refers to the following lawsuit: *Patrick O’Beirne, et al. v. Insperity Support Services, L.P., et al.*, Merced County Superior Court Case No. 23CV-00481.

2. “Aggrieved Employees” or “Covered Employees” consist of all current and former Business Performance Advisors who worked for Defendants, and/or their predecessors or merged entities, in the State of California, from April 1, 2020 through April 30, 2023. Based on the information provided by Defendants, Plaintiff estimates that there are approximately 265 Aggrieved Employees.

3. “Defendants” means Insperity Support Services, L.P. and Insperity, Inc.

4. “Court” means the Superior Court of California for the County of Merced.

5. “Effective Date” means the date upon which the Court signs an order approving the Settlement.

6. “Individual Settlement Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

7. “LWDA” means the California Labor and Workforce Development Agency.

8. “Gross Settlement Amount” is the non-reversionary sum of \$755,000, which represents the total amount payable under this Settlement by Defendants, including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment of Plaintiff’s incentive payment, and payment to the Settlement Administrator for administration costs.

9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Court approval) are subtracted from the Gross Settlement Amount: (a) Plaintiff’s attorneys’ fees up to 35% of the Gross Settlement Amount; (b) Plaintiff’s attorneys’ reasonable verified litigation costs up to \$22,000; (c) Plaintiff’s representative incentive payment up to \$10,000; and (d) reasonable third-party administration costs up to \$18,000.

10. “PAGA” means the California Labor Code’s Private Attorneys General Act (PAGA), Labor Code sections 2698, *et seq.*

11. “PAGA Period” means the period from April 1, 2020 to April 30, 2023.

12. “PAGA Released Claims” means all claims for civil penalties under the PAGA that are, were, or reasonably could have been alleged or asserted based upon the facts alleged in the Action for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, that occurred, arose, or accrued at any time during the PAGA Period.

13. “Parties” means Plaintiff and Defendants.

14. “Plaintiff” means Patrick O’Beirne.

15. “Plaintiff’s Counsel” means Bryan A. Kabahar of the Law Office of Bryan A. Kabahar.

16. “Settlement Administrator” means CPT Group, Inc. (“CPT”).

II. RECITALS

1. Plaintiff alleges that Defendants are liable for civil penalties under the PAGA as a result of their failure to (i) pay minimum and overtime wages, (ii) provide compliant meal periods and rest breaks, (iii) maintain and provide accurate itemized wage statements, (iv) reimburse business expenses, and (v) pay all wages owed timely and upon separation of employment. Defendants deny these allegations, and in entering into this Settlement, Defendants do not admit the merits, validity, or accuracy of any claims, allegations, assertions, or contentions made against them in the Action.

2. The Parties participated in two mediation sessions with Hon. Peter D. Lichtman (Ret.), and ultimately reached a tentative global settlement to fully resolve all claims for PAGA penalties asserted in the Action as to Plaintiff and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission of Liability.** Defendants deny liability exists to Plaintiff and to the Aggrieved Employees. This Settlement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against them in the Action.

Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Settlement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Settlement, directly or indirectly, in this case

or any other judicial, arbitral, administrative, investigative, or other forum or proceeding as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Settlement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Settlement, or any orders or judgments of the Court entered in connection with the Settlement.

2. **Gross Settlement Amount.** Defendants will pay \$755,000 as the non- reversionary Gross Settlement Amount. The Gross Settlement Amount will be deposited with the Settlement Administrator no later than ten (10) days after the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Defendants will not oppose Plaintiff's request for attorneys' fees in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount (\$264,250), and actual costs incurred in prosecuting this Action up to \$22,000. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on an IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Incentive Payment.** Defendants will not oppose Plaintiff's request for an incentive payment of \$10,000 for his service to the State of California and the Aggrieved Employees. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on an IRS Form 1099 issued to Plaintiff.

c. **Administration Costs.** Defendants will not oppose the Settlement Administrator's costs in an amount up to \$18,000 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on an IRS Form 1099 issued to the Settlement Administrator.

4. **Allocation of Net Settlement Amount.** The Net Settlement Amount will be distributed, pursuant to Labor Code section 2699(i), as follows: seventy-five percent (75%) to the LWDA and twenty-five (25%) to the Aggrieved Employees. The 25% portion of the Net Settlement Amount will be paid to all Aggrieved Employees based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period as follows: Individual Settlement Payments will be calculated based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is each Aggrieved Employee's total pay periods worked during the PAGA Period, and the denominator of which is the total aggregate number of pay periods worked by all Aggrieved Employees during the PAGA Period.

5. **PAGA Released Claims.** In consideration for the payments approved pursuant to the terms of this Settlement, Plaintiff, in his capacity as private attorney general and an aggrieved

employee acting on behalf of himself, the State of California, and the Aggrieved Employees, agrees that upon entry of an order approving the Settlement, Plaintiff and the Aggrieved Employees shall release Defendants from any and all of the PAGA Released Claims that occurred, arose, or accrued at any time during the PAGA Period. Upon entry of an order approving the Settlement and any judgment entered thereon, Plaintiff and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims against Defendants that occurred, arose, or accrued at any time during the PAGA Period.

6. **Covenants and Representations by Plaintiff.** Plaintiff represents and warrants that he has not assigned or transferred, or purported to assign or transfer, to any person or entity any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement. Plaintiff acknowledges that he has read this Settlement Agreement, that he fully understands his rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily.

7. **Judgment.** In connection with the motion to approve the Settlement, Plaintiff will submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering an order as set forth herein. The order will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and the Aggrieved Employees. The Parties agree to reasonably cooperate in preparing any other filings required by the Court for the approval of this Settlement.

8. **Publicity.** Plaintiff and his counsel agree that they have not and will not publish the Action or the Settlement. Plaintiff's counsel shall not report the Action or the Settlement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees or the Settlement on their websites, and shall not contact any reporters or media regarding the Settlement. Despite this provision, Plaintiff's Counsel can discuss the Settlement with the Court for purposes of approval and with Plaintiff.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use CPT Group, Inc. to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within twenty (20) days after the Effective Date, Defendants will provide the Settlement Administrator with information for the Aggrieved Employees. Defendants will, in good faith, compile from their records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and which will include each Aggrieved Employee's full name, last known mailing address, last known telephone number, pay period information, and Social Security number. Because Social Security numbers are to be included in the list, the Settlement Administrator will maintain the list in confidence, and access will be limited to those with a need to use the list as part of the administration of the Settlement only. The Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

3. **Explanatory Letter and Individual Settlement Payments.** Within fifteen (15) business days after the Effective Date, the Settlement Administrator will mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as Exhibit A, along with the Individual Settlement Payments, to all Aggrieved Employees via First Class U.S. Mail.

Each Individual Settlement Payment will be deemed penalties and reported on an IRS Form 1099. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. The funds associated with any check(s) that are not negotiated within one hundred eighty (180) days of having been mailed to an Aggrieved Employee will be transferred to a *cy pres* recipient to be agreed upon by the parties.

4. **Undeliverable Letters.** The Settlement Administrator will exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address will be presumed to be the best mailing address for each Aggrieved Employee. Any checks returned as undeliverable on or before the check cashing deadline will be promptly sent via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will perform a single re-mailing.

Defendants fully discharge their obligations to those Aggrieved Employees to whom they will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

Plaintiff and his counsel, as well as Defendants and their counsel, shall not bear any responsibility for errors or omissions in the calculation or distribution of the settlement payments or the development of the list of recipients of settlement payments.

5. **Payment of Remainder.** Within fifteen (15) business days after the Effective Date, the Settlement Administrator will mail the following payments: (1) the 75% share of the Net Settlement Amount to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel; (3) Court-approved incentive payment to Plaintiff; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Tax Consequences.** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and interest and reported via an IRS Form 1099 issued to each Aggrieved Employee. Neither Plaintiff nor Defendants, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. **CIRCULAR 230 DISCLAIMER**

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN

“OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

VI. MISCELLANEOUS PROVISIONS

1. **Successors.** This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors.

2. **Governing Law.** This Settlement will be construed under and governed by the laws of the State of California without regard to choice of law principles. All questions of validity, interpretation, or performance of any of its terms, or of any rights or obligations of the Parties to this Settlement, will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, County of Merced.

3. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them, and acknowledge and represent that this Settlement contains the entire understanding between them, and contains all terms and conditions pertaining to the compromise and settlement of the Action. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

4. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect will be null and void, and the Parties will be returned to their original respective positions.

5. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure section 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under Court rules or as set forth in this Settlement.

6. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument signed by the Parties or counsel for the Parties.

7. **Authorization to Enter into Settlement.** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement, and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If they 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 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

8. **Execution and Counterparts.** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

9. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel and the assistance of a mediator.

10. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

11. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

12. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

13. **Enforcement Action.** 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 or to declare rights and/or obligations under 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.

14. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

15. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

16. **Cooperation and Execution of Necessary Documents.** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently, and in good faith to ensure that all documents necessary to seek the Court's approval of this Settlement are timely filed.

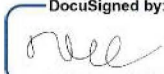
17. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to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

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement Agreement, accept and agree to the provisions contained in this Settlement Agreement, and hereby execute it voluntarily and with full understanding of its terms.

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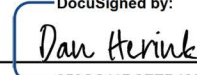
PATRICK O'BEIRNE

Dated: 5/22/2023

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Patrick O'Beirne, Plaintiff

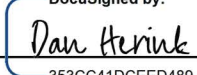
INSPERITY SUPPORT SERVICES, L.P.

Dated: June 27, 2023

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By: Daniel D. Herink
Title: EVP of Legal, General Counsel and Secretary

INSPERITY, INC.

Dated: June 27, 2023

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By: Daniel D. Herink
Title: EVP of Legal, General Counsel and Secretary

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APPROVED AS TO FORM AND CONTENT:

Dated: 06/05/2023 _____

LAW OFFICES OF BRYAN A. KABAHAH

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Bryan Kabahar
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Bryan A. Kabahar
Attorney for Plaintiff, Patrick O'Beirne

Dated: 06/28/23 _____

FISHER & PHILLIPS LLP

Mark J. Jacobs

Mark J. Jacobs
Attorney for Defendants, Insperity Support
Services, L.P. and Insperity, Inc.

EXHIBIT 1

NOTICE OF SETTLEMENT

O'Bierne, et al. v. Insperity Support Services, L.P., et al.
Merced County Superior Court Case No. 23CV-00481

[Dear Mr./Ms. _____]:

You are receiving this letter and the accompanying check pursuant to a court approved settlement in the above-referenced Action. The check represents your share of the approved settlement. This check is valid for 180 days from the date of issuance, and for tax purposes, an IRS Form 1099 will be issued to you for this payment.

Please read this letter carefully. It explains the matter and how the settlement affects you.

On _____, a former employee ("Plaintiff") filed the Action against Insperity Support Services, L.P. ("Company"), for alleged violations of the Private Attorney General Act ("PAGA") based on violations of the California Labor Code. Company denies Plaintiff's allegations and maintains that it has complied with all applicable laws. The Court has not ruled on the merits of the claims, Company's defenses, or any of the contentions of the parties. No inferences regarding the merits of the Action should be drawn from the fact there is a settlement.

The individuals impacted by this settlement include all individuals employed by Company as Business Performance Advisors in the State of California, at any time from April 1, 2020 through April 30, 2023 (the "Covered Employees"). According to Company's records, you fall within this definition, and you are therefore receiving this notice and the enclosed check.

By operation of the court-approved settlement, the Covered Employees are deemed to have fully released and discharged the Company from any and all claims for civil penalties under the PAGA for alleged violations of the California Labor Code that are, were, or reasonably could have been alleged or asserted based upon the facts alleged in the Action ("Released Claims") from April 1, 2020 through April 30, 2023 ("PAGA Period").

If you have any questions, you can contact the Settlement Administrator at:

Insperity Settlement
c/o CPT Group, Inc.
50 Corporate Park
Irvine, California 92606
Telephone: 1-833-xxx-xxxx