MEMORANDUM OF UNDERSTANDING

This shall serve as a summary of the anticipated material terms of the final written Settlement Agreement in the dispute, as initiated by Gregory Bendau ("Plaintiff") against Cerebral Medical Group, PC and Cerebral Medical Group, PA ("Cerebral" or "Defendants"), as identified in the action known as *Bendau v. Sequoia One PEO, LLC, et. al.* Northern District of California Case No. 3:21-cv-09580 ("Complaint"). This document is a binding agreement. The parties shall enter into a final written Settlement Agreement, the provisions of which shall not be materially inconsistent with this document.

1. **Definition of Class:** The Settlement shall cover all persons who fall within one of the following two classes.

a. **Provider Class**: All persons who were employed by Cerebral in California as a non-exempt employee with the job title of Associate Therapist, Care Counselor, Licensed Therapist (NE), Prescriber, Therapist Associate (NE) or Therapist Nonexempt from any time between December 10, 2017 and the date of Preliminary Approval of the Settlement.

b. **Vacation Class**: All former employees of Cerebral who were either a) employed by Cerebral in California as a salaried exempt employee on or after January 1, 2021; or b) employed by Cerebral in California as a non-exempt employee on or after August 15, 2021 and was classified as benefits eligible by Cerebral at any time between August 15, 2021 and the date of Preliminary Approval.

Those members of the Provider Class and Vacation Class who do not timely opt-out of the Settlement shall be "**Participating Class Members**". All Class Members who were employed during the PAGA Settlement Period (defined below) shall be **"Eligible Aggrieved Employees"**.

2. **Definition of Settlement Period:** The settlement class period ("Class Settlement Period') shall run from December 10, 2017 to September 28, 2022.

3. **Definition of PAGA Settlement Period:** The PAGA settlement period ("PAGA Settlement Period") shall run from October 5, 2020 to September 28, 2022.

4. **Monetary Terms of Settlement**

a. **Maximum Settlement Amount:** The Maximum Settlement Amount is $350,000.00. Of that sum, $5,000.00 (the "PAGA Settlement Amount") shall be designated as penalties arising under the Labor Code Private Attorneys' General Act ("PAGA"), 75% of which shall be paid directly to the LWDA and the remaining 25% of which shall be distributed among the Eligible Aggrieved Employees. The Settlement Amount includes all: (1) payments to the class; (2) class counsel's fees; (3) class counsel's costs; (4) claims administration expenses; (4) the PAGA Settlement Amount; and (5) a service payment to the named Plaintiff. Defendants shall separately pay any employer payroll taxes owed on the settlement payments. Each class member shall be responsible for paying any personal (non-employer) taxes due on his or her settlement payment. Under no circumstances shall Defendants be obligated to pay more than the Maximum Settlement Amount plus the payroll taxes owed thereon.

b. **Net Settlement Amount:** The Net Settlement Amount will be calculated by deducting the following items from the Maximum Settlement Amount in the amounts approved by the Court: i) attorneys' fees and costs of Class Counsel; 2) all costs of settlement administration; 3) all incentive payments to the Plaintiff; and 4) the PAGA Payment.

c. **Division of Settlement Amounts:**

i. This Settlement is non-reversionary, meaning that none of the Maximum Settlement Amount shall be paid or returned to or received by any Defendant under any circumstances.

ii. The Net Settlement Amount shall be divided on a pro rata basis among Participating Class Members as follows. Twenty-Five Thousand Dollars shall be divided among the Participating members of the Vacation Class, with each member getting an equal amount. The balance of the Net Settlement Amount shall be divided among the Participating Members of the Provider Class based on the number of workweeks the Participating Class Member qualifies as a member of the Provider Class. Workweeks will be calculated based upon dates of employment.

iii. Each Eligible Aggrieved Employee shall receive a pro-rata portion of the 25% of the PAGA Settlement Amount that is designated for distribution to the allegedly aggrieved employees on a pro rata basis among Eligible Aggrieved Employees based on the number of weeks the Eligible Aggrieved Employee qualifies as a member of the Provider Class during the PAGA Period plus one additional workweek if the Eligible Aggrieved Employee qualifies as a member of the Vacation Class during the PAGA Period. As an example, and for avoidance of doubt, if an Eligible Aggrieved Employee was a member of the Provider Class during the PAGA Period for fifteen weeks and was a member of the Vacation Class for one or more weeks during the PAGA Period, the individual would be credited with sixteen workweeks.

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

5. **Timing of Payment:** Defendants shall deposit the settlement funds within ten business days of when the Court enters an Order finally approving the parties' long-form Settlement Agreement. Upon receipt, the claims administrator will place the settlement funds in an interest-bearing escrow account but shall not distribute them until ten business days following the Effective Date of the Settlement Agreement. "Effective Date" means the date by which the Court's order finally approving the Parties' long-form Settlement Agreement becomes binding – *i.e.*, the date on which the time for any further appeal of that Order has expired without the filing of such an appeal. If the parties settlement does not become binding as described herein, the settlement funds shall be returned to Defendant along with any accrued interest, minus the sum necessary to compensate the claims administrator for work performed through that date.

6. **Tax Allocation:** Payments from the PAGA Settlement Amount shall be characterized as 100% non-wages. Other payments to Participating Class Members shall be characterized as 20% wages, and 80% penalties, interest and expense reimbursements and interest. Payments characterized as wages shall be reported as W2 Income and payments characterized as non-wages shall be reported as Form 1099 payments.

7. **Cashing of Checks:** Class Members will have 180 days from the date of mailing of their settlement check to cash their settlement check. In the event that there are any settlement checks that are not deposited or cashed within the 180 day period, said funds shall be remitted to a mutually acceptable cy pres recipient that has been approved by the Court. Any failure of a Class Member to deposit a check shall not affect the enforceability of the release contained herein claims, as the parties jointly agree that valid consideration for same is the offer of monetary consideration by means of the offer of settlement and mailing of settlement checks.

8. Attorneys' Fees and Costs: The parties agree that counsel for the Class Members may seek and Employer will not oppose up to 33.33% of the Maximum Settlement Amount as attorneys' fees. The parties agree that counsel for the Class Members may seek and Employer will not oppose up to $15,000.00 as reasonable out-of-pocket costs and expenses.

9. Plaintiff's Service/Enhancement Award: Employer will not oppose a service/enhancement award to the Plaintiff in the amount of $5,000.00, in exchange for which Plaintiff will execute a general release of all claims. The incentive payments will be characterized as taxable income and reported on an IRS Form 1099.

10. Appointment, Duties and Costs of Administrator

a. **Claims Administrator:** Subject to Court Approval, the Parties agree that Phoenix Settlement Administrators shall be retained to administer their Settlement. The costs of claims administration shall be paid out of the Maximum Settlement Amount prior to distribution to the Class Members.

b. Delivery of Class List: Within fifteen (15) business days of the order of preliminary approval of settlement by the Court is filed, Defendants shall provide an electronic file to the Claims Administrator containing the following information for each Class Member (the "Class List"):

i. Full name, last known address, last known email address that is not an email address used exclusively in any Defendant's electronic communication system, and social security number;

ii. An indication of whether the individual qualified as a member of the Vacation Class during the Class Period and/or during the PAGA Period;

iii. The number of workweeks the individual qualified as a member of the Provider Class during the Class Period and the number of workweeks the individual qualified as a member of the Provider Class during the PAGA Period;

The names, addresses, email addresses, telephone numbers and employee identification numbers, and Social Security Numbers of the Class Members provided to the Settlement Administrator shall be considered confidential, shall not be disclosed to anyone other than Employer's counsel and the Settlement Administrator, and shall be returned to the Employer at the conclusion of the matter. Specifically, the Settlement Administrator shall not provide Plaintiff's counsel with any portion of the names, addresses, email addresses, telephone numbers and employee identification numbers and Social Security Numbers in the Class List, absent express written approval from Employer's counsel. This provision in no way impedes the ability of the Settlement Administrator to provide information necessary for Class Counsel to carry out duties of responding to Class Member inquiries, disputes or other communications.

c. **Notice Packet:** Within ten business days of receiving the Class List, the Claims Administrator shall prepare a Notice Packet for each Class Member that shall describe the nature of the litigation and the settlement, including the estimated amount of the Class Member's pro rata share of the settlement. The Parties shall jointly agree upon the terms of the Notice Packet and if they do not agree, the terms shall be decided by the Court.

d. **Delivery of the Notice Packet:** The Settlement Administrator shall deliver the Notice Packet by First Class U.S. Mail with an enclosed, postage-paid return envelope to each Class Member and by email to all Class Members whose email addresses are in the Class List. Any Notices returned undeliverable shall be traced once to obtain a new address and be re-mailed by First Class Mail. Putative Class Members shall have forty-five (45) days from the date of mailing of the Notice to submit objections or requests to be excluded from the settlement to the Claims Administrator. To the extent any mailed Notice is returned as undeliverable, such person shall be permitted at least thirty (30) days from any re-mailing of the Notice to submit any objection or request for exclusion.

e. **No Right to Exclusion or Objections to the PAGA Settlement:** Because this Settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no Eligible Aggrieved Employee has the right to exclude himself or herself from the release of the Released PAGA Claims, and all Eligible Aggrieved Employees will receive their share of the PAGA Settlement Amount. The Parties also agree that no Eligible Aggrieved Employee has the right to object to the PAGA Settlement Amount.

11. Release:

a. **Released Parties**: "Released Parties" collectively means: (i) Defendants; (ii) each Defendant's past, present and future parents, subsidiaries and affiliate (as defined in California Corporations Code Section 150) and, without limitation any corporation, limited liability company, partnership, trust, foundation and non-profit entity which controls, is controlled by, is under common ownership with or provides management services to either Defendant; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing for the claims released herein.

b. **"Action"** means the class action lawsuit pending before the Court entitled *Gregory Bendau v. Sequoia One, PEO, LLC, et. al.*, United States District Court for the Northern District of California Case No. 3:21-cv-09580.

c. **Participating Class Member Release:** Upon final approval of the Settlement by the Court, each Participating Class Member, together and individually, on their behalf and on behalf of their respective heirs, executors, estate and benefit plan administrators, and attorneys, shall fully and forever release and discharge Released Parties from all claims based on the allegations of Defendants' conduct in paragraphs 20 through 28 of the Complaint in the Action (complaint filed December 10, 2021), and all claims for: (1) failure to pay wages for all hours worked; (2) failure to pay accrued and unused vacation time; (3) failure to keep accurate payroll records and provide accurate itemized wage statements; (4) failure to pay wages due during or at separation of employment; (5) failure to indemnify business expenses; (6) claims asserted through California Business & Professions Code sec. 17200 et. seq. based on the claims described in (1) through (5) above in this paragraph; (7) claims for statutory penalties based on the claims described in (1) through (6) above in this paragraph; (8) interest based on the claims described in (1) through (7) above in this paragraph; and (9) attorneys' fees and costs based on the claims described in (1) through (8) above in this paragraph. The claims released by this paragraph are limited to those that arose during the Class Settlement Period.

d. **Release of PAGA Claims:** Upon final approval of the Settlement by the Court, each Eligible Aggrieved Employee, together and individually, on their behalf and on behalf of their respective heirs, executors, administrators, estate and benefit plan administrators, and attorneys, shall fully and forever release and discharge all the Released Parties from all claims for civil penalties under PAGA (the Labor Code Private Attorney General Act, California Labor Code §§ 2698, et. seq.) based on the allegations of Defendants' conduct in paragraphs 20 through 28 of the Complaint in the Action (complaint filed December 10, 2021) or based on the claims that were specified in the letter Plaintiff sent to the LWDA on or about October 5, 2021 or in the Sixth Cause of Action in Plaintiff's Complaint in the Action, and all claims for civil penalties under PAGA for (1) failure to pay wages for all hours worked; (2) failure to pay accrued and unused vacation time; (3) failure to keep accurate payroll records and provide accurate itemized wage statements; (4) failure to pay wages due during or at separation of employment; (5) failure to indemnify business expenses. The release of the PAGA Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request to exclude him or herself from this Settlement. The claims released by this paragraph are limited to those that arose during the PAGA Settlement Period.

e. **Named Plaintiff Release:** Plaintiff shall execute a general release as to the Released Parties.

f. **Right of Revocation:** Defendants, and only Defendants, shall have the right to revoke the Settlement Agreement within 7 days after the objection/exclusion period closes and the Claims Administrator has informed Defendants how many Class Members have opted out, if those who have excluded themselves from the Settlement account for more than 10% of the total Participating Class Members.

12. **Settlement Documentation and Approval:** The terms and conditions of this MOU along with other appropriate and mutually acceptable terms shall be set forth in a formal settlement agreement ("Settlement Agreement"), the terms of which shall not be materially inconsistent with this MOU, and the Settlement Agreement shall, when fully executed and finally approved by a court, replace this MOU, which shall then be of no further force and effect. If the Court fails to finally approve this Settlement, the Settlement and the MOU are null and void and are not admissible in any other proceeding or action between the Parties

13. No Admission/Denial of Liability: Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in this matter. Nothing in this MOU or the final Settlement Agreement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Employer.

14. Publicity and Confidentiality

a. **Communications by Counsel**: Plaintiff shall instruct his counsel (Ira Spiro and the Mahoney Law Group, APC) to refrain from soliciting Class Members to exclude themselves from the Settlement and to refrain from initiating, contacting or having any communications with Class Members during the settlement approval process other than those necessary to respond to inquiries they receive from Class Members or to otherwise carry out their duties as Class Counsel. Defendants agree to instruct their counsel (Littler Mendelson) not to discourage Class Members from participating in this Settlement and to refer any questions received from Class Members to the Claims Administrator

b. **No Media:** No public comment, communications to media, or any form of advertising or public announcement (including social media) regarding the case shall be made by Plaintiff or his counsel at any time.

c. **Confidentiality:** Prior to filing of the motion for preliminary approval, Plaintiff shall not discuss the terms of the settlement or the negotiations leading to settlement with any person other than his counsel.. Plaintiff shall instruct his counsel (Ira Spiro and the Mahoney Law Group, APC) that prior to filing the motion for preliminary approval they are to also refrain from discussing the terms of the settlement or the negotiations leading to it with anyone other than Plaintiff, Defendants' counsel (Littler Mendelson) or a third party with whom it is necessary for Plaintiff's counsel to communicate in order to carry out their duties as Class Counsel.

15. Escalator: As of August 18, 2022, the number of weeks worked by the Provider Class during the Class Period is estimated by Defendants to be 9,752 workweeks (based upon dates of employment). If the number of workweeks estimated by Defendants for the Provider Class has increased by more than 10% by the end of the Class Period (September 28, 2022), Defendants shall have the option of: a) selecting a new end date for the release that limits the total workweeks being released by the Provider Class to no more than 10,727 workweeks; or 2) increasing the Net Settlement Amount proportionally (for any Proivder Class workweeks in excess of 10,727.

16. Use of Data from Mediation Each of the Parties shall be entitled to use, solely for the purpose of obtaining the Court's approval of this Settlement, the data supplied by either Party in the mediation, that otherwise would be subject to the mediation privilege.

17. Integration: Each party warrants that no promise or inducement has been offered or made to that party except as set forth herein. It is understood and agreed by each party that this MOU specifically supersedes any and all prior agreements and understandings, written or oral, express or implied, between Defendants, Plaintiff and their respective counsel regarding the matters addressed herein.

18. **Governing Law:** This MOU is made under the laws of the State of California, without regard to otherwise applicable principles of conflicts of laws.

19. **Authority to Sign:** The signatories hereto represent and warrant that they have the authority to sign on behalf of their designated parties. This Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Photographic or facsimile copies of any such signed counterparts may be used in lieu of the original for any said purpose.

____________________________	____________________________
Plaintiff Gregory Bendau	Date
Michael Nathan Boggs MD	2022-12-19
Defendants Cerebral Medical Group, PC and Cerebral Medical Group, PA	Date

Signature Certificate

Reference number: JNJCR-T6A8K-WSR33-VNMYG

Signer	Timestamp	Signature
Michael Boggs Email: dr.michael.boggs@cerebral.com		Michael Nathan Boggs MD
Sent:	19 Dec 2022 19:27:22 UTC	
Viewed:	19 Dec 2022 20:43:43 UTC	
Signed:	19 Dec 2022 20:44:22 UTC	
Recipient Verification:		IP address: 71.192.57.13
✔Email verified	19 Dec 2022 20:43:43 UTC	Location: Wilton, United States

Document completed by all parties on:

19 Dec 2022 20:44:22 UTC

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Gregory Bendau — 12 / 21 / 2022

Plaintiff Gregory Bendau — Date

Defendants Cerebral Medical Group, PC and Cerebral Medical Group, PA — Date