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on behalf of himself and all others similarly situated and aggrieved

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CENTER, LLC, MIRACLE MILE POST ACUTE, LLC
AND CPE HR, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

CARLOS ENRIQUE PEREZ, an individual
and on behalf of all others similarly situated,

Plaintiff,

v.

MIRACLE MILE HEALTHCARE
CENTER, LLC, a California limited liability
company; MIRACLE MILE POST ACUTE
LLC, a California limited liability company;
WESTSIDE HEALTH CARE, LLC, a
California limited liability company;
BEVERLY WEST HEALTHCARE, LLC, a
California limited liability company;
TRINITY NURSING HOME
MANAGEMENT, INC., a California
corporation; CPE HR, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV43674

[Assigned for all purposes to the Hon.
Maren Nelson in Dept. 17]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: November 30, 2021

Trial Date: None set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 CARLOS ENRIQUE PEREZ (“Plaintiff”) individually and on behalf of the Settlement Class, on
4 the one hand; and defendants MIRACLE MILE HEALTHCARE CENTER, LLC, MIRACLE
5 MILE POST ACUTE, LLC AND CPE HR, INC. (collectively “Defendants”), on the other hand,
6 in the lawsuit entitled *Perez v. Miracle Mile Healthcare Center, LLC, et al.*, filed in Los Angeles
7 County Superior Court, Case No. 21STCV43674 (the “Action”). Plaintiff and Defendants shall
8 be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties
9 to fully, finally, and forever resolve the claims as set forth herein, based upon and subject to the
10 terms and conditions of this Agreement.

11 **1. DEFINITIONS**

12 **A. “Action”** means *Perez v. Miracle Mile Healthcare Center, LLC, et al.*, filed in
13 Los Angeles Superior Court, Case No. 21STCV43674.

14 **B. “Aggrieved Employees”** means Class Members working for Defendants during
15 the PAGA Period as non-exempt, hourly-paid employees in California.

16 **C. “Class Counsel”** means: David D. Bibiyan of Bibiyan Law Group, P.C. The term
17 “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

18 **D. “Class Period”** means the period from February 1, 2020 through April 25, 2022.

19 **E. “Class Notice”** means and refers to the notice sent to Class Members after
20 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
21 Agreement.

22 **F. “Court”** means the Superior Court of the State of California for the County of
23 Los Angeles.

24 **G. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
25 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
26 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
27 have been filed, the date on which they have been resolved or exhausted.
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1 **H. “Defendants”** means, collectively, Miracle Mile Healthcare Center, LLC,
2 Miracle Mile Post Acute, LLC, and CPE HR, Inc.

3 **I. “Employer Taxes”** means employer-funded taxes and contributions imposed on
4 the wage portions of the Individual Settlement Payments under the Federal Insurance
5 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
6 and contributions required of employers, such as for unemployment insurance.

7 **J. “General Release”** means the broader release of claims by Plaintiff, which is in
8 addition to Plaintiff’s limited release of claims as a Participating Class Member.

9 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Three
10 Hundred Forty-Five Thousand Dollars and Zero Cents (\$345,000.00),¹ which shall be paid by
11 Defendants, from which all payments for the Individual Settlement Payments to Participating
12 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
13 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
14 PAGA Payment, and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
15 which shall be paid by Defendants separate, apart, and in addition to the Gross Settlement
16 Amount.

17 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved
18 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
19 Individual Settlement Share if he or she is also a Participating Class Member.

20 **M. “Individual Settlement Payment”** means a payment to a Participating Class
21 Member of his or her net share of the Net Settlement Amount.

22 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
23 Amount that a Participating Class Member is projected to receive based on the number of
24 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
25 shall be reflected in his or her Class Notice if he or she does not submit a timely and valid Request
26 for Exclusion.

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¹ As the same may be increased in accordance with Paragraph 17, below.

1 **O. “LWDA Payment”** means the payment to the State of California Labor and
2 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
3 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
4 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
5 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand Dollars and
6 Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
7 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
8 based on the Workweeks worked for Defendants as a non-exempt, hourly-paid employee in
9 California in the PAGA Period (*i.e.* the PAGA Payment).

10 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
11 that is available for distribution to the Participating Class Members after deductions for the Court-
12 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
13 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
14 Payment, and the PAGA Payment.

15 **Q. “Operative Complaint” or “Complaint”** means the First Amended Complaint
16 to be filed with the Court.

17 **R. “PAGA Payment** is the 25% portion of the Twenty Thousand Dollars and Zero
18 Cents (\$20,000.00) that is allocated toward PAGA penalties (Five Thousand Dollars and Zero
19 Cents (\$5,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
20 Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period,
21 which would be in addition to their Individual Settlement Share if they are Participating Class
22 Members, as well.

23 **S. “PAGA Period”** means the period from November 29, 2020 through April 25,
24 2022.

25 **T. “Participating Class Members”** means all Settlement Class Members who do
26 not submit a timely and valid Request for Exclusion.

27 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
28 Settlement Amount that a Participating Class Member is eligible to receive based on the number

1 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
2 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
3 may be entitled if he or she is also an Aggrieved Employee.

4 **V. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
5 Plaintiff Carlos Enrique Perez

6 **W. “Preliminary Approval Date”** means the date on which the Court enters an
7 Order granting preliminary approval of the Settlement.

8 **X. “Released Parties”** shall mean Defendants and each of their past, present, and
9 future respective subsidiaries, dba’s, affiliates, parents, divisions, insurers and reinsurers, assigns,
10 joint venturers, and company-sponsored employee benefit plans of any nature and their
11 successors and predecessors in interest, including all of their officers, members, managers,
12 partners, investors, lenders, directors, shareholders, employees, agents, principals, heirs,
13 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
14 trustees, and agents.

15 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
16 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
17 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
18 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
19 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
20 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
21 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
22 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
23 Workweek Dispute was submitted by the Response Deadline.

24 **Z. “Request for Exclusion”** means a written request to be excluded from the
25 Settlement Class pursuant to Paragraph 9(C) below.

26 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
27 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
28 will be paid out of the Gross Settlement Amount.

1 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
2 Administrator in administration of the Settlement, including, but not limited to, translating the
3 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
4 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
5 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated
6 taxes and withholdings, providing declarations, generating Individual Settlement Payment
7 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
8 transmitting payment to Class Counsel for the Court-approved amounts for attorneys’ fees and
9 reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and to the
10 LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related
11 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
12 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
13 not to exceed \$10,750.00. If the actual amount of the Settlement Administration Costs is less
14 than \$10,750.00, the difference between \$10,750.00 and the actual Settlement Administration
15 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
16 \$10,750.00, then such excess will be paid solely from the Gross Settlement Amount and
17 Defendants will not be responsible for paying any additional funds in order to pay these
18 additional costs.

19 **CC. “Settlement Administrator”** means the Third-Party Administrator mutually
20 agreed upon by the Parties that will be responsible for the administration of the Settlement
21 including, without limitation, translating the Class Notice in Spanish, the distribution of the
22 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount
23 and related matters under this Agreement.

24 **DD. “Settlement Class” or “Settlement Class Members”** means all current and
25 former non-exempt, hourly-paid employees who worked in California for Defendants at any time
26 during the Class Period.
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1 **EE.** “**Workweeks**” means the number of weeks that a Settlement Class Member was
2 employed by and worked for the Defendants in a non-exempt, hourly-paid position during the
3 Class Period in California, based on the employees’ timecards.

4 **2. BACKGROUND**

5 **A.** On November 29, 2021, Plaintiff filed with the LWDA and served on Defendants
6 a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
7 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
8 violations. (“PAGA Notice”).

9 **B.** On November 30, 2021, Plaintiff filed a putative wage-and-hour class action in
10 the Los Angeles County Superior Court, Case No. 21STCV43674 alleging that, during the Class
11 Period, Defendants, as it pertains to Class Members: (1) failed to pay overtime wages; (2) failed
12 to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4)
13 failed to provide rest periods or compensation in lieu thereof; (5) failed to timely pay all wages
14 due upon separation from employment; (6) failed to issue accurate and compliant wage
15 statements; and (7) engaged in unfair competition (the “Class Action”).

16 **C.** On February 2, 2022, after sixty-five (65) days had passed since Plaintiff filed and
17 served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
18 Code violations, Plaintiff filed a separate representative action seeking PAGA civil penalties
19 against Defendants for the Labor Code violations alleged in the PAGA Notice (the “PAGA
20 Action”).

21 **D.** Shortly thereafter, the Parties agreed to exchange informal discovery and attend
22 an early mediation, in which Plaintiff was provided with, among other things: (1) a 21.5%
23 sampling of time and payroll records for Class Members; (2) average rates of pay for all Class
24 Members; (3) the total number of Workweeks and pay periods worked by Class Members and
25 Aggrieved Employees; (4) the total number of Class Members separated from employment with
26 Defendants during the Class Period; and (5) Defendants’ California 2019 employee handbook.

27 **E.** On April 25 2022, the Parties participated in a full-day mediation before Lisa
28 Klerman, Esquire, a well-regarded mediator experienced in mediating complex labor and

1 employment matters. With the aid of the mediator's evaluation, the Parties reached the
2 Settlement to resolve the Action.

3 **F.** Class Counsel has conducted significant investigation of the law and facts relating
4 to the claims asserted in the Class Action, and the PAGA Notice, and have concluded that that
5 the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the
6 Settlement Class, taking into account the sharply contested issues involved, the expense and time
7 necessary to litigate the Action through trial and any appeals, the risks and costs of further
8 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
9 the information learned through informal discovery regarding Plaintiff's allegations, and the
10 substantial benefits to be received by Settlement Class Members. As part of the Agreement,
11 Plaintiff agrees to file a First Amended Complaint in the Class Action, and dismiss the PAGA
12 Action without prejudice, thereby effectively consolidating the Class Action and PAGA Action,
13 as further set out below (hereinafter, the "Action").

14 **G.** Defendants have concluded that, because of the substantial expense of defending
15 against the Action, the length of time necessary to resolve the issues presented herein, the
16 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
17 interest to accept the terms of this Agreement. Defendants deny each of the allegations and
18 claims asserted against it in the Action and the PAGA Notice. However, Defendants nevertheless
19 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
20 continuing litigation and for the purpose of putting to rest the controversies engendered by the
21 Action.

22 **H.** This Agreement is intended to and does effectuate the full, final, and complete
23 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
24 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
25 and Aggrieved Employees.

26 **3. JURISDICTION**

27 The Court has jurisdiction over the Parties and the subject matter of the Action. The
28 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the

1 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
2 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
3 pursuant to California Rule of Court, rule 3.769, subdivision (h).

4 **4. STIPULATION OF CLASS CERTIFICATION**

5 The Parties stipulate to the certification of the Settlement Class under this Agreement for
6 purposes of settlement only.

7 **5. AMENDMENT OF PLEADING AND MOTIONS FOR APPROVAL OF**
8 **SETTLEMENT**

9 The Parties hereby stipulate to the filing of a First Amended Complaint in the Class
10 Action that includes all of the allegations in the PAGA Action. If and when the First Amended
11 Complaint is filed, Plaintiff will dismiss the PAGA Action without prejudice, thereby effectively
12 consolidating all allegations in the PAGA Action into the Class Action.

13 After full execution of this Agreement, Plaintiff will move for an order granting
14 preliminary approval of the Settlement, approving and directing the mailing of the proposed
15 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
16 certifying the Settlement Class for settlement purposes only, and approving the deadlines
17 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
18 Objections. If and when the Court preliminarily approves the Settlement, and after
19 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
20 Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a
21 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
22 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

23 The Parties hereby expressly agree that whether or not the Court finally approves the
24 Settlement, Plaintiff’s allegations from the PAGA Action will be effectively consolidated into
25 the Class Action, will relate back to the date on which Plaintiff filed the PAGA Notice, and
26 Defendants will be estopped from making any argument that there is any adverse effect on the
27 statute of limitations caused by Plaintiff’s dismissal of the PAGA Action without prejudice to
28 effectuate this consolidation.

1 **6. STATEMENT OF NO ADMISSION**

2 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
3 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
4 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
5 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
6 in the event that this Agreement is not approved by the Court, or any appellate court, is
7 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
8 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
9 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
10 way any of their objections or defenses in the Action and the PAGA Notice. The Parties shall be
11 restored to their respective positions in the Action prior to the entry of this Settlement. Except
12 as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms
13 and provisions shall not be offered or received as evidence in any action or proceeding to
14 establish any liability or admission on the part of Defendants or to establish the existence of any
15 condition constituting a violation of, or a non-compliance with, federal, state, local or other
16 applicable law. Payment of wages as part of this Agreement does not extend or alter the class
17 member-claimants' period of employment for any purpose.

18 **7. RELEASE OF CLAIMS**

19 **A. Release by All Participating Class Members.**

20 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
21 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
22 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and
23 all Participating Class Members release all claims against the Released Parties asserted in the
24 Operative Complaint filed in the Action, or any and all claims that may be asserted against the
25 Released Parties based on the factual allegations in the Operative Complaint, as follows: For the
26 duration of the Class Period, the release includes, for Participating Class Members: (1) all claims
27 for failure to pay overtime wages; (2) all claims for failure to pay minimum wages; (3) all claims
28 for failure to provide compliant meal periods, or premium compensation in lieu thereof; (4) all

1 claims for failure to provide compliant rest periods, or premium compensation in lieu thereof;
2 (5) all claims for failure to pay all wages due upon separation from employment; (6) all claims
3 for failure to issue accurate and compliant wage statements; and (7) all claims asserted through
4 California Business & Professions Code section 17200, *et seq.* arising out of the Labor Code
5 violations referenced in the Complaint (the “Class Released Claims”).

6 **B. Release by All Aggrieved Employees**

7 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
8 the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice
9 and thereafter alleged in the Operative Complaint for PAGA civil penalties pursuant to Labor
10 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations
11 of Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, *et*
12 *seq.*, 432, 510, 512, 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2699, 2802, and 2810.5 (the
13 “PAGA Released Claims”). The Class Released Claims and PAGA Released Claims shall be
14 referred to herein as the “Released Claims”. All Aggrieved Employees, the LWDA, and State of
15 California shall release claims arising under PAGA for the PAGA Period as set forth in the PAGA
16 Released Claims. The PAGA Released Claims shall be effective for Aggrieved Employees
17 regardless of their decision to participate in the class settlement.

18 **C. Claims Not Released**

19 The releases above expressly exclude all other claims, including claims for vested
20 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
21 compensation, and any other claims outside of the Class Released Claims of Participating Class
22 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
23 Employees (and, to the extent permitted by law, the State of California) arising outside of the
24 PAGA Period.

25 **D. General Release.**

26 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
27 of Judgment, and payment by Defendants to the Settlement Administrator selected of the full
28 Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, in

1 addition to the Released Claims, Plaintiff makes the additional following General Release:
2 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
3 action of every nature and description whatsoever, known or unknown, asserted or that might
4 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
5 law or regulation arising out of, relating to, or in connection with any act or omission of the
6 Released Parties through the date of full execution of this Agreement in connection with
7 Plaintiff's employment with Defendants or the termination thereof, except for any and all other
8 claims that may not be released as a matter of law through this Agreement. To the extent of the
9 General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order
10 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the
11 Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes
12 necessary to effectuate the Settlement, they shall have expressly waived and relinquished, to the
13 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
14 California Civil Code, or any other similar provision under federal or state law, which provides:

15 A general release does not extend to claims that the creditor or
16 releasing party does not know or suspect to exist in his or her
17 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.

18 **8. SETTLEMENT ADMINISTRATOR**

19 A. Plaintiff and Defendants, through their respective counsel, have selected Phoenix
20 Settlement Administrators to administer the Settlement, which includes but is not limited to
21 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
22 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
23 expenses of the Settlement Administrator, currently estimated to be \$10,750.00 will be paid from
24 the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is
25 less than \$10,750.00, the difference between \$10,750.00 and the actual Settlement
26 Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
27 Administration Costs exceed \$10,750.00, then such excess will be paid solely from the Gross
28

Settlement Amount and Defendants will not be responsible for paying any additional funds in order to pay these additional costs.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION
PROCESS

A. Notice to the Settlement Class Members

(1) Within fourteen (14) calendar days after the Preliminary Approval Date, Defendants' Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendants' possession, custody, or control; (3) last known telephone number(s) currently in Defendants' possession, custody, or control; (4) last known Social Security Number(s) in Defendants' possession, custody, or control; and (5) total Workweeks worked or information sufficient to allow the Settlement Administrator to calculate individual Class Member Workweeks (Class List"). Additionally, within fourteen (14) calendar days after the Preliminary Approval Date, Defendant will provide a declaration from its data analyst to Class Counsel attesting to the number of Workweeks calculated and methodology in calculating the number of Workweeks. Because social security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and shall only access and use the list to administer the settlement in conformity with the Court's orders. The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class List from Defendants, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The Settlement Administrator shall maintain the Class List and digital copies of all the Settlement Administrator's records evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from the Final Approval Date.

(2) The Class Notice will set forth:

- 1 (a) the Settlement Class Member's estimated Individual
2 Settlement Payment and Individual PAGA Payment,
3 and the basis for each;
- 4 (b) the information required by California Rule of Court,
5 rule 3.766, subdivision (d);
- 6 (c) the material terms of the Settlement;
- 7 (d) the proposed Settlement Administration Costs;
- 8 (e) the definition of the Settlement Class;
- 9 (f) a statement that the Court has preliminarily approved
10 the Settlement;
- 11 (g) how the Settlement Class Member can obtain
12 additional information, including contact information
13 for Class Counsel;
- 14 (h) information regarding opt-out and objection
15 procedures;
- 16 (i) the date and location of the Final Approval Hearing;
17 and
- 18 (j) that the Settlement Class Member must notify the
19 Settlement Administrator no later than the Response
20 Deadline if the Settlement Class Member disputes the
21 accuracy of the number of Workweeks as set forth on
22 his or her Class Notice ("Workweek Dispute"). If a
23 Settlement Class Member fails to timely dispute the
24 number of Workweeks attributed to him or her in
25 conformity with the instructions in the Class Notice,
26 then he or she shall be deemed to have waived any
27 objection to its accuracy and any claim to any
28 additional settlement payment based on different data.

1 (3) If a Class Notice from the initial notice mailing is returned as
2 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
3 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
4 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
5 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
6 is successful in obtaining a new address, it will, within (2) calendar days, re-mail the Class Notice
7 to the Settlement Class Member. Further, any Class Notices that are returned to the Settlement
8 Administrator with a forwarding address before the Response Deadline shall be promptly re-
9 mailed to the forwarding address affixed thereto.

10 (4) No later than seven (7) calendar days from the Response Deadline, the
11 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
12 completion of the notice process, including the number of attempts to obtain valid mailing
13 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
14 and copies of all Requests for Exclusion and Objections received by the Settlement
15 Administrator.

16 **B. Objections.**

17 Only Participating Class Members may object to the Settlement. In order for any
18 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
19 do so by mailing a written objection to the Settlement Administrator at the address or phone
20 number provided on the Class Notice no later than the Response Deadline. The Settlement
21 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
22 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
23 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
24 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
25 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
26 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
27 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
28 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member

1 will remain a member of the Settlement Class and if the Court approves this Agreement, the
2 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
3 the same extent as a Settlement Class Member who does not object. The date of mailing of the
4 Class Notice to the objecting Settlement Class Member shall be conclusively determined
5 according to the records of the Settlement Administrator. Settlement Class Members need not
6 object in writing to be heard at the Final Approval Hearing; they may object or comment in
7 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
8 to any objection lodged with the Court up to five (5) court days before the Final Approval
9 Hearing.

10 **C. Requesting Exclusion.**

11 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
12 Settlement by mailing a written request to be excluded from the Settlement ("Request for
13 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
14 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
15 Member's Social Security Number; (3) the Class Member's signature; and (4) any statement
16 standing for the proposition that the Class Member does not wish to participate in the Settlement.
17 The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
18 Class Counsel and Defendants' Counsel and shall report the Requests for Exclusions that it
19 receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing.
20 Any Settlement Class Member who requests exclusion using this procedure will not be entitled
21 to receive any payment from the Settlement and will not be bound by the Settlement Agreement
22 or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class
23 Member who does not opt out of the Settlement by submitting a timely and valid Request for
24 Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released
25 Claims, as well as any Judgment that may be entered by the Court if Final Approval of the
26 Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion
27 and an objection. If a Settlement Class Member submits an Objection and a Request for
28 Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement

Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the

1 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
2 (“PAGA Workweeks”).

3 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
4 Settlement Administrator will use the following formula: Individual Settlement Share =
5 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

6 **C.** To determine each Participating Class Member’s Participating Individual
7 Settlement Share, the Settlement Administrator will determine the aggregate number of
8 Workweeks worked by all Participating Class Members during the Class Period (“Participating
9 Class Workweeks”) and use the following formula: Individual Settlement Share =
10 (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement
11 Amount.

12 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
13 to Participating Class Members by way of check and is referred to as “Individual Settlement
14 Payment(s)”.

15 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
16 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
17 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$5,000.00 (the
18 PAGA Payment).

19 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
20 to Participating Class Members and/or Aggrieved Employees by way of check. When a
21 Participating Class Member is also an Aggrieved Employee, one check may be issued that
22 aggregates both the Individual Settlement Payment and the Individual PAGA Payment

23 **11. DISTRIBUTION OF PAYMENTS**

24 **A. Distribution of Individual Settlement Payments.**

25 Participating Class Members will receive an Individual Settlement Payment and
26 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
27 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
28 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)

1 calendar days after expiration of the 180-day period, checks for such payments shall be
2 canceled and funds associated with such checks shall be transmitted to the California
3 Controller's Office, Unclaimed Property Fund. Thus, there shall be no "unpaid residue" subject
4 to the requirements of Code of Civil Procedure section 384.

5 **B. Funding of Settlement.**

6 Defendants shall, within thirty (30) calendar days of Final Approval Date, make payment
7 of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this
8 Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue
9 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account ("QSA")
10 with an FDIC insured banking institution, for distribution in accordance with this Agreement and
11 the Court's Orders and subject to the conditions described herein. The Settlement Administrator
12 shall timely provide Defendants with the information/documents it needs in order to calculate
13 employer-side payroll taxes.

14 **C. Time for Distribution.**

15 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
16 Employer Taxes by Defendants, or as soon thereafter as practicable, the Settlement Administrator
17 shall distribute all Payments due from the QSA for: (1) the Service Award to Plaintiff as specified
18 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
19 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
20 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
21 Payment, as specified in this Agreement and approved by the Court; (5) Individual Settlement
22 Payments to Participating Class Members, less applicable taxes and withholdings, as specified
23 in this Agreement and approved by the Court; and (5) Individual PAGA Payments as specified
24 in this Agreement and approved by the Court. All interest accrued shall be for the benefit of the
25 Class Members and distributed on a *pro rata* basis to Participating Class Members based on the
26 number of Workweeks worked by them in the Class Period.

27 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

1 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
2 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
3 17 of this Agreement, amounts to One Hundred and Twenty Thousand Seven Hundred and Fifty
4 Dollars and Zero Cents (\$120,750.00). Class Counsel shall further apply for, and Defendants
5 shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs
6 associated with Class Counsel's prosecution of this matter as set forth by declaration testimony
7 in an amount up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of
8 attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future
9 attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the
10 settlement in Action. The "future" aspect of the amounts stated herein includes, without
11 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
12 There will be no additional charge of any kind to either the Settlement Class Members or request
13 for additional consideration from Defendants for such work unless, Defendants materially breach
14 this Agreement, including any term regarding funding, and further efforts are necessary from
15 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce
16 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
17 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
18 be a part of the Net Settlement Amount.

19 **13. SERVICE AWARD TO PLAINTIFF**

20 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
21 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
22 Plaintiff, for participation in and assistance with the Action. Any Service Award awarded to
23 Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form
24 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein,
25 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

26 **14. TAXATION AND ALLOCATION**

27 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
28 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS

1 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
2 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the
3 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
4 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
5 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
6 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
7 be made pursuant to applicable state and/or local withholding codes or regulations.

8 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
9 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
10 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
11 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
12 set forth in this Section may be modified in a manner to bring Defendants into compliance with
13 any such changes.

14 c. All Employer Taxes shall be paid by Defendants separate, apart, and in addition
15 to the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
16 payroll taxes as described above.

17 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
18 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
19 be relied upon as such within the meaning of United States Treasury Department Circular 230
20 (31 C.F.R. Part 10, as amended) or otherwise.

21 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

22 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
23 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
24 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA
25 and twenty-five percent (25%) (\$5,000.00) will be distributed to Aggrieved Employees on a *pro*
26 *rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the
27 PAGA Period.

28 **16. COURT APPROVAL**

1 This Agreement is contingent upon an order by the Court granting Final Approval of the
2 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
3 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
4 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
5 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
6 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
7 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
8 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
9 the Settlement Agreement being voided or not approved, and which control in such an event.

10 **17. INCREASE IN WORKWEEKS**

11 Defendants represent that there are approximately 10,171 Workweeks worked during
12 the Class Period. In the event that it is determined that the number of Workweeks worked by
13 Class Members during the Class Period increases by more than 10% or 1,017 Workweeks, then
14 the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of
15 11,188 Workweeks multiplied by the Workweek Value. The Workweek Value shall be
16 calculated by dividing the originally agreed-upon Gross Settlement Amount (\$345,000.00) by
17 10,171, which amounts to a Workweek Value of \$33.92. Thus, for example, should there be
18 12,000 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased
19 by \$27,543.04. ((12,000 Workweeks – 11,188 Workweeks) x \$33.92 per Workweek.).

20 **18. NOTICE OF JUDGMENT**

21 In addition to any duties set out herein, the Settlement Administrator shall provide
22 notice of the Final Judgment entered in the Action by posting the same on its website for a
23 period of no less than one (1) year.

24 **19. RIGHT TO RESCIND**

25 If more than five percent (7%) of the Class Members elect not to participate in the
26 Settlement, Defendants may, at its election, rescind the Settlement Agreement and all actions
27 taken in furtherance of it will be thereby null and void. Defendants must meet and confer with
28 Class Counsel prior to exercising this right and must make clear their intent to rescind the

1 Agreement within fourteen (14) calendar days after the expiration of the Opt Out Deadline.

2 **20. MISCELLANEOUS PROVISIONS**

3 **A. Interpretation of the Agreement.**

4 This Agreement constitutes the entire agreement between the Parties with respect to its
5 subject matter. Except as expressly provided herein, this Agreement has not been executed in
6 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
7 written representations or terms shall modify, vary or contradict its terms. In entering into this
8 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
9 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
10 enforced under the laws of the State of California, both in its procedural and substantive aspects,
11 without regard to its conflict of law provisions. Any claim arising out of or relating to the
12 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
13 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendants
14 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
15 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
16 and each of them, participated in the negotiation and drafting of this Agreement and had available
17 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
18 Defendants may claim that any ambiguity in this Agreement should be construed against the
19 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
20 approved by the Court.

21 **B. Further Cooperation.**

22 The Parties and their respective attorneys shall proceed diligently to prepare and execute
23 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
24 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
25 will not take any action inconsistent with this Agreement, including, without limitation,
26 encouraging Class members to opt out of the Settlement.

27 **C. Counterparts.**

1 The Agreement may be executed in one or more actual or non-original counterparts, all
2 of which will be considered one and the same instrument and all of which will be considered
3 duplicate originals.

4 **D. Authority.**

5 Each individual signing below warrants that he or she has the authority to execute this
6 Agreement on behalf of the Party for whom or which that individual signs. This Settlement
7 Agreement will be binding upon, and inure to the benefit of, and be enforceable by the Parties'
8 respective heirs, executors, administrators, representatives, successors and assigns.

9 **E. No Third-Party Beneficiaries.**

10 Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California,
11 Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-
12 party beneficiaries.

13 **F. Deadlines Falling on Weekends or Holidays.**

14 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
15 or legal holiday, that deadline shall be continued until the following business day.

16 **G. Jurisdiction of the Court**

17 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
18 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
19 of this Settlement Agreement and all orders and judgments entered in connection therewith,
20 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
21 interpreting, implementing, and enforcing the settlement embodied in this Settlement
22 Agreement and all orders and judgments entered in connection therewith.

23 **H. Severability.**

24 In the event that one or more of the provisions contained in this Agreement shall for any
25 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
26 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
27 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
28 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

H. No Publicity.

Plaintiff and his counsel agree they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit Class Counsel's communications with the Class Members in furtherance of approval of this Settlement.

IT IS SO AGREED:

Dated: Sep 28, 2022, 2022


Carlos Perez (Sep 28, 2022 15:40 PDT)

Carlos Enrique Perez
Plaintiff and Class Representative

Dated: _____, 2022

MIRACLE MILE HEALTHCARE CENTER,
LLC
Defendant

By: _____

Its: _____

Dated: _____, 2022

MIRACLE MILE POST ACUTE, LLC
Defendant

By: _____

Its: _____

Dated: _____, 2022

CPE HR, INC.
Defendant

By: _____

Its: _____

AGREED AS TO FORM:

1 **H. No Publicity.**

2 Plaintiff and his counsel agree they will not issue any press releases, initiate any contact
3 with the press, respond to any press inquiry or have any communication with the press about the
4 fact, amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall
5 limit Class Counsel's communications with the Class Members in furtherance of approval of this
6 Settlement.

7 **IT IS SO AGREED:**

8 Dated: _____, 2022

Carlos Enrique Perez
Plaintiff and Class Representative

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11 Dated: 9/27/22, 2022

MIRACLE MILE HEALTHCARE CENTER,
LLC
Defendant

12
13
14 By: DAMIAN CARDENAS

15 Its: _____

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18 Dated: 9/27/22, 2022

MIRACLE MILE POST ACUTE, LLC
Defendant

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20 By: DAMIAN CARDENAS

21 Its: _____

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23 Dated: 9.28.22, 2022

CPE HR, INC.
Defendant

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25 By: Joshua Sable

26 Its: Counsel

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28 **AGREED AS TO FORM:**

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Dated: September 29, 2022

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff CARLOS ENRIQUE
PEREZ

Dated: September 28, 2022

JOSEPH R. LORDAN
SUMY KIM
BRITTANY VULCAN
Counsel for Defendants MIRACLE MILE
HEALTHCARE
CENTER, LLC, MIRACLE MILE POST
ACUTE, LLC
AND CPE HR, INC.

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