

Private Attorneys General Act (Cal. Lab. Code § 2698, *Et Seq.*) Settlement Agreement

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the Action and PAGA Released Claims shall be settled and resolved subject to the following terms and conditions set forth in this Private Attorneys General Act (Cal. Lab. Code § 2698, *et seq.*) Settlement Agreement (“Settlement Agreement”), entered by and between Plaintiff Catherine Smith (“Plaintiff”), for herself and on behalf of the State of California and other Aggrieved Employees pursuant to the California Private Attorneys General Act, and Defendant First Meridian Care Services, Inc. (“FMCS” or “Defendant”). Plaintiff and FMCS are collectively referred to herein as the “Parties.”

This Settlement Agreement shall be effective upon the date of the Court order approving the settlement (the “Effective Date”).

I. DEFINITIONS

Unless otherwise defined herein, the following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled Catherine L. Smith, an individual, on behalf of herself and all others similarly situated, *Plaintiff, v. First Meridian Care Services, Inc. dba Meridian Home Care*, a California Corporation; and Does 1 to 50, Defendants, San Diego County Superior Court Case No. 37-2021-00048087-CU-OE-CTL.

2. “Aggrieved Employees” mean *all individuals who are or were employed by Defendant as non-exempt employees in California during the PAGA Period*, i.e., from November 12, 2020 through the date on which the Court grants approval of the settlement, which is estimated to consist of approximately 559 individuals.

3. “Complaint” shall mean the operative complaint in the Action.

4. “Court” or “San Diego County Superior Court” means the Superior Court of California for the County of San Diego.

5. “Defense Counsel” or “Counsel for Defendant” is: Robert E. King, Esq. of Legally Nanny®, 37 Trailwood, Irvine, California 92620 and Joel Van Parys, Esq. of CDF Labor Law LLP, 900 University Avenue, Suite 200, Sacramento, California 95825.

6. “Employee PAGA Portion” is the amount to be distributed to the Aggrieved Employees, which shall consist of 25% of the PAGA Penalties Amount, as provided in Section III.4 herein.

7. “Employee Payments” refers to the PAGA Penalty Payments that will be distributed to Aggrieved Employees, as provided in Section III.4 herein.

8. “Gross Settlement Amount” is the sum of Two Hundred and Thirty Thousand Dollars and Zero Cents (\$215,000.00), which represents the total amount payable under this Settlement Agreement by Defendant, and includes the Employee PAGA Portion payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Court-awarded Attorneys’ Fees (not to exceed \$71,666.67) to Plaintiff’s Counsel, Court-awarded Litigation Costs (not to exceed \$14,000.00) to Plaintiff’s Counsel, and a Court-awarded payment to the Settlement Administrator for Settlement Administration Costs (not to exceed \$7,000.00).

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

10. “Plaintiff’s Counsel” means Jonathan Melmed, Esq. and Laura M. Supanich, Esq. of Melmed Law Group, 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

11. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) Attorneys’ Fees to Plaintiff’s Counsel; (b) Litigation Costs to Plaintiff’s Counsel; and (c) Settlement Administration Costs to Settlement Administrator.

12. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

13. “LWDA Payment” means the amount to be paid to the LWDA, which is seventy-five percent (75%) of the Other PAGA Penalties Amount as set forth in Section III.4 herein.

14. “PAGA Period” means the time period from November 12, 2020 through the date on which the Court grants approval of the settlement.

15. “PAGA Released Claims” mean any and all claims for civil penalties that could have been assessed upon and collected from the Released Parties under PAGA, based on the factual allegations in the Complaint, including, but not limited to, purported violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2082, 2084, 2699, California Code of Regulations Title 8 Sections 11050 and 11150, and California Industrial Commission Wage Orders 4, 5 and 15, arising during the PAGA Period, from the alleged (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to pay wages timely during employment; (6) failure to pay all wages earned and unpaid at separation; (7) failure to indemnify all necessary business expenditures; (8) failure to furnish accurate itemized wage statements; and (9) civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code Sec. 2699 *et seq.*

16. “Released Parties” means FMCS and its past, present, and future owners, officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries,

affiliates, divisions, successors, agents and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.

17. “Settlement Administrator” means ILYM Group, Inc., a third-party administrator who shall administer the settlement, subject to approval by the Court, in accordance with this Settlement Agreement, and whose costs and expenses to administer the settlement are currently estimated not to exceed \$7,000.00 (“Settlement Administration Costs”).

II. RECITALS

1. On November 12, 2021, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2082, 2084, 2699, and California Industrial Commission Wage Order 5 and others that may be applicable.

2. On November 12, 2021, Plaintiff filed a complaint in the Superior Court of California, County of San Diego, Case No. 37-2021-00048087-CU-OE-CTL, entitled Catherine L. Smith, an individual, on behalf of herself and all others similarly situated, Plaintiff, v First Meridian Care Services, Inc. dba Meridian Home Care, a California Corporation; and Does 1 to 50, Defendants, for (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to provide rest periods and pay missed rest period premiums; (4) failure to provide meal periods and pay missed meal period premiums; (5) failure to pay wages timely during employment; (6) failure to pay all wages earned and unpaid at separation; (7) failure to indemnify all necessary business expenditures; (8) failure to furnish accurate itemized wage statements; and (9) violation of California’s unfair competition law (California Business & Professions Code Sections 17200-17210). On January 26, 2022, Plaintiff filed a first amended complaint adding a cause of action for civil penalties under PAGA. Defendant denies Plaintiff’s allegations and claims.

3. On May 10, 2022, the Parties participated in a day-long mediation with mediator Judge Steven Denton. In preparation for the mediation, Plaintiff’s counsel requested and Defendant’s counsel provided sample time and payroll data for the purported class, and personnel and employment documents. With Judge Denton’s assistance, the Parties agreed to fully and finally resolve the Action and the PAGA Released Claims as to Plaintiff, the State of California, and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement nor action taken in implementation thereof shall be construed to be an admission or concession by Plaintiff that her claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such

liability or wrongdoing. Nor will any of the foregoing be used in any way in 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. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation, or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related Court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Dismissal of Class Claims**: Within 30 days of all Parties executing the Settlement Agreement, Plaintiff agrees to dismiss Plaintiff's class claims so that only the PAGA cause of action, based on the same set of facts and theories in the Complaint, remain.

3. **Gross Settlement Amount**. FMCS shall pay \$215,000.00 as the Gross Settlement Amount. FMCS shall pay \$107,500.00 of the Gross Settlement Amount within 30 days of Court approval of the settlement of the Action, and the remaining \$107,500.00 of the Gross Settlement Amount by December 15, 2022 or 90 days after Court approval of the settlement of the Action, whichever is later.

4. **Net Settlement Amount**. The Parties agree that the Net Settlement Amount shall be distributed to the LWDA and Aggrieved Employees as follows: Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved Employees on a *pro rata* basis, based on their respective number of pay periods worked for FMCS during the PAGA Period. Payments to Aggrieved Employees of their share of the Other PAGA Penalties Amount shall be referred to as "PAGA Penalty Payment(s)." Each Aggrieved Employee will be paid a non-wage check for the PAGA Penalty Payment, and will receive an IRS Form 1099 for said payment.

5. **Attorneys' Fees Payment and Litigation Costs Payment**. Defendant will not oppose Plaintiff's request for an award of attorneys' fees in the amount up to \$71,666.67 ("Attorneys' Fees") and litigation costs and expenses in the amount up to \$14,000.00 incurred in prosecuting this Action ("Litigation Costs"), to Plaintiff's Counsel. In the event the Court approves a payment of less than \$71,666.67 for Attorneys' Fees and/or less than \$14,000.00 for Litigation Costs to Plaintiff's Counsel, the difference will be a part of the Net Settlement Amount. The Attorneys' Fees and Litigation Costs payments will be reported on an IRS Form 1099 issued to Plaintiff's Counsel.

6. **Settlement Administration Costs**. Defendant will not oppose Plaintiff's request for payment in the amount up to \$7,000.00 to the Settlement Administrator for administering the settlement. In the event the Court approves a payment of less than \$7,000.00 for Settlement Administration Costs, the difference will be a part of the Net Settlement Amount. Settlement

Administration Costs will be reported on an IRS Form 1099 issued to the Settlement Administrator.

7. **PAGA Released Claims.** Upon the Effective Date, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all PAGA Released Claims defined in Section I.15 herein. This release of claims only covers those civil penalties which are recoverable under PAGA, and does not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees may have under the law against Released Parties for violations of the California Labor Code.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.**

a. Plaintiff represents and warrants that she 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 she has read this Settlement Agreement, that she fully understands her rights, privileges, and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

9. **Limited Disclosure and No Publicity.** Except as provided below, to the extent necessary to effectuate the settlement or as required by the PAGA statute, a court of law, or legal process, neither Plaintiff nor Plaintiff's Counsel will publicize the terms of this Settlement Agreement or issue a press release, hold a press conference, publish information about the settlement on any website or through any social media, or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court.

10. **Filing of PAGA Approval Motion by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for preparing PAGA Approval Motion ("Motion"). Plaintiff's Counsel will file the Motion, which is mutually agreed to by the Parties, as soon as practicable. Plaintiff's Counsel will serve the Motion on Defendant's Counsel and submit it to the LWDA. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's Counsel shall undertake all required submissions and disclosures to the LWDA and the Court to obtain approval of the settlement. Plaintiff agrees to provide notice to the Labor and Workforce Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

11. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not dismiss the Action with prejudice, as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, or the settlement does not become final for any other reason, then either of the Parties shall have the right within ten (10) calendar days of written notice thereof to elect to terminate the Settlement Agreement, in which case it shall have no force or effect, and the Parties shall be deemed to have reverted to their original, respective status as of the date and time immediately prior to the execution of this

Settlement Agreement.

12. **Dismissal**. The Settlement Administrator will provide the Parties with a declaration confirming that distribution of payments has been completed in accordance with the Settlement Agreement and the Court's orders, within ten (10) business days of distributing all payments under the settlement. If requested by Defendant, Plaintiff's Counsel will file the declaration with the Court and required dismissal papers (i.e., a Request for Dismissal of the Action with prejudice) within ten (10) business days of receipt or as otherwise ordered by the Court. This Settlement Agreement is expressly conditioned upon the Court entering the dismissal of the Action in its entirety with prejudice. The dismissal will not release or bar any claims other than all claims as to Plaintiff pursuant to Cal. Code Civ. Proc. Section 1542, and the PAGA Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator**. The Parties have mutually selected ILYM Group, Inc. to handle the administration of this settlement, subject to approval by the Court.

Notice to Aggrieved Employees.

a. No later than twenty (20) business days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, total pay periods worked for FMCS in California during the PAGA Period, and Social Security number, to the extent available from FMCS's records. 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. FMCS will in good faith compile from its records the Aggrieved Employees List and provide it to the Settlement Administrator in a computer-readable format, such as a Microsoft Excel spreadsheet.

b. No later than fifteen (15) calendar days after receipt of the final installment payment of the Gross Settlement Amount from Defendant, the Settlement Administrator will mail the Employee Payments under cover letter, substantially in the form attached hereto as "**Exhibit A**" ("Cover Letter"), to each of the Aggrieved Employees identified on the Aggrieved Employees List. Prior to mailing the Cover Letter, the Settlement Administrator shall check the addresses provided in the Aggrieved Employees List using the United States Postal Service's National Change of Address database, and update the addresses for known address changes. Should any of the mailings to the Aggrieved Employees of their Cover Letter and Employee Payments be returned as undeliverable within thirty (30) calendar days of mailing, the Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employee (via a skip trace or other reasonable method) and re-mail the Cover Letter and

Employee Payments to any alternative or updated address obtained by the Settlement Administrator.

Deposit and Distribution of Gross Settlement Amount.

a. Within ninety (90) days from the Effective Date or December 15, 2022, whichever is later, Defendant shall fund the Gross Settlement Amount into a settlement account established by the Settlement Administrator, for administration and distribution in accordance with this Settlement Agreement and the Court's orders.

b. The Settlement Administrator shall distribute payments for the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, the Employee Payments, and the LWDA Payment within fifteen (15) calendar days after the Second Funding Date. All payments provided for by this Settlement Agreement shall be made by the Settlement Administrator in accordance with this Settlement Agreement and the Court's order approving this settlement.

c. Each Aggrieved Employee will be issued one check for his or her Employee Payment which will expire one hundred and eighty (180) calendar days from the date the checks are issued by the Settlement Administrator. After the 180 day-period, the Settlement Administrator shall cancel all checks that have not been cashed or deposited and remit funds associated with such canceled checks to the State Controller's Office, Unclaimed Property Division, in the name associated with each Aggrieved Employee whose Employee Payment checks are canceled.

V. MISCELLANEOUS PROVISIONS

1. **No Impact on Employee Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff, any Aggrieved Employee, or the LWDA under the settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by FMCS. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under FMCS's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any FMCS benefit plan, policy, or bonus program. FMCS retains the right, if necessary, to modify the language of its benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

2. **Tax Consequences.** Plaintiff and Aggrieved Employees will be solely responsible for correctly characterizing any compensation received under the settlement on his/her personal income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts

paid to them under the settlement. Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement, do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such.

3. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in California, and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Diego.

4. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action and PAGA Released Claims.

5. **Judgment and Continued Jurisdiction.** The Parties agree that this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6, and the Court, to the fullest extent of the law, shall retain exclusive and continuing jurisdiction over this Action, over all Parties, and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement.

6. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties, subject to approval by the Court.

7. **Authorization to Enter into Binding Settlement Agreement.** Defendant represents and warrants that the undersigned has the authority to act on behalf of FMCS and to bind FMCS to the terms of this Settlement Agreement. Plaintiff represents and warrants that she has the capacity to act on her own behalf and on behalf of all who might claim through her to bind her to the terms and conditions of this Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement 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 settlement and/or mediation privileges and/or confidentiality

provisions that otherwise might apply under federal or state law.

8. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

9. **Execution and Counterparts.** This Settlement Agreement 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 provided that counsel for the Parties will exchange among themselves original signed counterparts.

10. **Acknowledgement of Mutual Drafting and that the Settlement is Fair, Adequate, and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement 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 Agreement.

11. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement 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 Agreement valid and enforceable.

12. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, provided that the essential terms and conditions of this Settlement Agreement for each Party remain valid, binding and enforceable, the remaining portions of this Settlement Agreement 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 Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

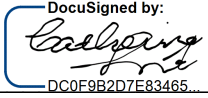
13. **No Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

14. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: 6/14/2022

By: 
Catherine Smith

DEFENDANT:

Dated: 06/20/2022

By: 
First Meridian Care Services, Inc.