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Attorneys for Plaintiff Daniel Rivera Garcia Jr., individually,
and on behalf of all others similarly situated.

[Additional counsel listed on following page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

DANIEL RIVERA GARCIA JR., individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

MEDMARK SERVICES, INC.; MEDMARK
TREATMENT CENTERS – STOCKTON, INC.;
and DOES 1 through 20, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0004196

*Assigned for all purposes to:
Hon. George J. Abdallah
Dept. 10A*

JOINT STIPULATION OF SETTLEMENT

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Attorneys for Defendants

MEDMARK SERVICES, INC.; MEDMARK TREATMENT CENTERS – STOCKTON, INC.

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Plaintiff Ross Albaugh (“Plaintiff”) and the Class
7 Members, on the one hand, and Defendants Medmark Services, Inc.; Medmark Treatment Centers –
8 Stockton, Inc. (“Medmark” or “Defendants”), on the other hand. Plaintiff and Defendants collectively
9 are referred to in this Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendants to pay the settlement amount of Two Hundred Fifty Thousand
12 Dollars and zero cents (\$250,000.00) as provided in Section 3.06(a) below (“Gross Settlement
13 Amount”) pursuant to the terms and conditions of this Agreement and for the consideration set forth
14 herein, including but not limited to, a release of all claims by Plaintiff and the Class Members as set
15 forth herein.

16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “Action” means the action described as follows: *Daniel Rivera Garcia Jr.,*
21 *individually and on behalf of all others similarly situated v. Medmark Services, Inc.; Medmark*
22 *Treatment Centers – Stockton, Inc.; and DOES 1 through 20, inclusive,”* Case No. STK-CV-UOE-
23 2022-0004196, commenced on May 25, 2022, in the Superior Court of the State of California for the
24 County of San Joaquin, and any amendments and underlying Labor and Workforce Development
25 Agency (“LWDA”) letters thereto. Defendants’ counsel shall be given a reasonable opportunity to
26 propose amendments to the LWDA letter, which must be filed (and will be considered part of this
27 Action) and include all claims and theories raised by Plaintiff’s counsel to date in the litigation of
28 this Action, including but not limited to alleged meal and rest break claims, wage statement violations

(including the specific wage-statement theories that have been raised), waiting-time penalty and Labor Code section 204 claims, unpaid wage claims, unpaid overtime claims, and regular-rate violations. Attached as **Exhibit B** is the Parties' amended LWDA letter. Similarly, Class Counsel will need to file a First Amended Complaint to formally add the PAGA claims, a meal-break claim, and Labor Code section 203 and 204 claims, the same additional theories to be added to the amended LWDA letter, as well as adding Ross Albaugh as a class representative. Attached as **Exhibit C** is the Parties' proposed First Amended Complaint.

b. "Agreement" means this Joint Stipulation of Settlement, including the attached Exhibit(s).

c. "Class" means all non-exempt employees employed by Defendants in California at any time during the Class Period. Provided, however, that any employees who signed a general release of claims after their termination of employment shall not be included as a Class Member. It is believed there are two such employees.

d. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

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e. "Class List" means a list based on Defendants' business records that identifies each Class Member's name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, and the number of Qualifying Workweeks worked during the Class Period and PAGA Period.

f. "Class Member(s)" means all members of the Class.

g. "Class Period" means May 25, 2018 through preliminary approval by the Court of the Settlement of this Action.

h. "Court" means the California Superior Court for the County of San Joaquin, where the Action is currently pending.

i. "Date of Finality" means on the date that the Court grants final approval unless there are objectors/objections to the Settlement in which case the Date of Finality shall be the first regular business day after the appeal period runs (if no appeal is filed) or the first day after all appeals are denied or otherwise finally resolved or decided in favor of the Settlement.

j. "Defendants" means Defendants Medmark Services, Inc.; and Medmark Treatment Centers – Stockton, Inc.

k. "Defense Counsel" means counsel for Defendants:

l. **GOODWIN PROCTER LLP**

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m. "Disposition" means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

n. "Final Order Approving Settlement of Class Action" or "Final Order" means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

o. "Gross Settlement Amount" or "GSA" means Two Hundred Fifty Thousand Dollars and zero cents (\$250,000.00) to be paid by Defendants as provided by this Agreement to settle this Action. All payments to the Class, administration costs, attorney's fees and costs, PAGA and LWDA payments, and Incentive Award, pursuant to Section 3.06(a) below, shall be paid out of the Gross Settlement Amount. The employer's share of payroll taxes arising from the payments made under this settlement shall be paid by Defendants separate from and in addition to the Gross Settlement

1 Amount. The Gross Settlement Amount is subject to a pro rata increase pursuant to Section 3.04(e)
2 below. No part of the Gross Settlement Amount shall revert to Defendants. Defendants shall not be
3 required to pay anything greater than the Gross Settlement Amount in exchange for the releases set
4 forth in this Agreement with the exception of payroll taxes.

5 p. "Incentive Award" means a monetary amount of up to Ten Thousand Dollars
6 (\$10,000.00) for Plaintiff, subject to Court approval, in recognition of their effort and work in
7 prosecuting the Action on behalf of Class Members, and for their general release of claims.

8 q. "Individual Settlement Payment(s)" means each Participating Class Member's
9 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
10 by the calculations provided in this Agreement.

11 r. "LWDA" means The State of California Labor and Workforce Development Agency.

12 s. "LWDA Payment" means 75% of the \$40,000 allocated to the settlement of PAGA
13 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of
14 this Agreement, as provided for below.

15 t. "Motion for Final Approval" means Plaintiff's submission of a written motion,
16 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
17 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
18 to enter a Final Order in this Action.

19 u. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
20 including any evidence as may be required for the Court to grant preliminary approval of the
21 Settlement as required by Rule 3.769 of the California Rules of Court.

22 v. "Plaintiff" means Ross Albaugh.

23 w. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
24 administration costs, Class Counsels' attorney's fees and costs, Incentive Award, and LWDA
25 Payment, pursuant to Section 3.06(a)-(f) below.

26 x. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
27 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
28

1 to Section 3.04(b) below. There shall be no ability for PAGA Group Members (defined below) to
2 opt out of the PAGA resolution.

3 y. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
4 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

5 z. "PAGA" means the California Private Attorneys General Act of 2004, which is
6 codified in California Labor Code §§ 2698 *et seq.*

7 aa. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
8 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
9 agreed that the PAGA Settlement Amount is Forty Thousand Dollars (\$40,000), subject to Court
10 approval. If the Court requires that a larger portion of the GSA be allocated to PAGA penalties, that
11 shall not be a basis for Plaintiff to vitiate the Agreement, and any additional amount required to be
12 allocated to PAGA shall come from the GSA. Of the PAGA Settlement Amount, 75% will be
13 considered the LWDA Payment, and the remaining 25% will be added to the Net Settlement Amount
14 and distributed to PAGA Group Members.

15 bb. "PAGA Group Members" means all Class Members employed by Defendants at any
16 time between May 23, 2021 through preliminary approval by the Court of the Settlement of this
17 Action ("PAGA Period").

18 cc. "Participating Class Member(s)" is defined as a Class Member who does not timely
19 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
20 Settlement Amount automatically without the need to return a claim form. Each Participating Class
21 Member will be paid his/her Individual Settlement Payment.

22 dd. "Preliminary Approval Date" means the date the Court preliminarily approves the
23 Settlement embodied in this Agreement.

24 ee. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
25 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
26 Administrator for the benefit of Participating Class Members.

27 ff. "Qualifying Workweeks" means the number of weeks that Class Members worked
28 for Defendants as non-exempt employees in California during the Class Period.

14 ii. “Settlement Administration Costs” means all costs incurred by the Settlement
15 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
16 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
17 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
18 of checks to Class Counsel for attorneys’ fees and costs, to Plaintiff for his Incentive Award, and to
19 the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

24 ARTICLE II

Section 2.01: Stipulation of Class Certification for Settlement Purposes

ACTIVE/124343718.1

1 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
2 This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality
3 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
4 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
5 of the Class with respect to all causes of action alleged in the Action. Defendants do not consent to
6 certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date
7 of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the
8 Class as to Defendants will be vacated and Plaintiff, Defendants, and the Class will be returned to
9 their positions with respect to the Action as if the Agreement had not been entered into. In the event
10 that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving
11 certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall
12 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
13 this Agreement, the fact that Defendants did not oppose the certification of a Class under this
14 Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used
15 or cited thereafter by any person or entity, including in any manner whatsoever, including without
16 limitation any contested proceeding relating to the certification of any class. If the Date of Finality
17 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
18 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendants expressly
19 reserve the right to challenge the propriety of class certification in the Action for any purpose, if the
20 Date of Finality does not occur.

21 The Parties and their respective counsel shall take all steps that may be requested by the Court
22 relating to the approval and implementation of this Agreement and shall otherwise use their
23 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
24 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
25 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
26 resolution, the Parties agree to seek the assistance of mediator Jill R. Sperber to resolve the dispute.

1 **ARTICLE III**

2 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

3 The procedure for obtaining Court approval of and implementing this Agreement shall be as
4 follows:

5 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

6 Plaintiff will bring a motion before the Court for an order conditionally certifying the Class
7 to include all claims pled in the Action based on the preliminary approval of this Agreement. The
8 date that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval
9 Date."

10 **Section 3.02: The Settlement Administrator**

11 The Parties have chosen Phoenix Settlement Administrators, Inc. to administer this
12 Settlement and to act as the Settlement Administrator, including but not limited to distributing and
13 responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs,
14 calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the
15 Individual Settlement Payment checks and distributing them to Participating Class Members,
16 establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys' fees
17 and costs, the Incentive Award check to Plaintiff, and the employer payroll taxes to the appropriate
18 taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and
19 conditions of this Agreement.

20 All costs of administering the Settlement, including but not limited to all costs and fees
21 associated with preparing, issuing and mailing any and all notices to Class Members and/or
22 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
23 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
24 returns and any other filings required by any governmental taxing authority or agency, all costs and
25 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
26 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
27 incurred and/or charged by the Settlement Administrator in connection with the execution of its
28

duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

Section 3.03: Notice to Class Members

No later than fifteen (15) business days after the Preliminary Approval Date, Defendants will provide the Settlement Administrator with a “Class List” in electronic format based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, and their weeks worked during the Class Period and PAGA Period.

Within ten (10) business days of receiving a Class List from Defendants, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class Members shall not be required to submit claim forms in order to receive a proportional share of the Net Settlement Amount.

If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on LexisNexis or comparable databases based on set criteria and, if another address is identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties

1 that reasonable means be used to locate Class Members and that the Settlement Administrator be
2 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
3 Individual Settlement Payments to all Participating Class Members.

4 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
5 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
6 status report provided to the Parties.

7 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
8 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
9 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
10 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
11 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
12 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
13 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
14 procedures set forth in Section 3.06(g) below.

15 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
16 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
17 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
18 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
19 exclusion and objections that the Settlement Administrator received.

20 **Section 3.04: Responses to Notice**

21 **a. Class Member Disputes**

22 If any Class Member disagrees with Defendant's records as to his or her Qualifying
23 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
24 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
25 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
26 supporting documentation. The Notice will also provide a method for the Class Member to challenge
27 the employment data on which his or her Individual Settlement Payment is based. The Settlement
28 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith

1 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the
2 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
3 the information provided to it.

4 **b. Requests for Exclusion from Class**

5 In order for any Class Member to validly exclude himself or herself from the non-PAGA
6 component of this Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed
7 by the Class Member or his or her authorized representative, and must be sent to the Settlement
8 Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the
9 Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice
10 Packet shall contain instructions on how to validly exclude himself or herself from the non-PAGA
11 component of this Settlement (*i.e.*, opt out), including the language to be used in a request for
12 exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for
13 exclusion was postmarked, shall be conclusively determined according to the records of the
14 Settlement Administrator. Any Class Member who timely and validly requests exclusion from the
15 Class and the non-PAGA component of this Settlement will not be entitled to any Individual
16 Settlement Payment unless the individual is a PAGA Group Member, will not be bound by the terms
17 and conditions of this Agreement except (as applicable for PAGA Group Members) for those terms
18 defining the resolution of PAGA claims, and will not have any right to object, appeal, or comment
19 thereon.

20 Any Class Member who fails to timely submit a request for exclusion shall automatically be
21 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
22 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
23 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
24 and/or released in this Agreement will be extinguished.

25 **c. Objections to Settlement**

26 For any Class Member to object to this Agreement, or any term of it, the person making the
27 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
28 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)

1 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
2 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
3 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
4 the date the signed objection was postmarked, shall be conclusively determined according to the
5 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
6 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
7 Members may also appear at the final approval hearing to object. The Court retains final authority
8 with respect to the consideration and admissibility of any Class Member objections.

9 **d. Encouragement of Class Members**

10 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
11 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
12 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
13 Class Members.

14 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

15 If the number of Qualifying Workweeks exceeds 8,325 by more than 14%, the GSA will
16 increase pro rata to the extent that the number of workweeks exceeds 8,325 by 14%. For example if
17 the number of Qualifying Workweeks is 20% greater than 8,325, then the GSA shall be increased
18 6%.

19
20 **f. Right of Defendants to Void Agreement**

21 If more than 4% of the Class Members or Daniel Rivera Garcia Jr. opt out, Defendants will
22 have the absolute right (but not the obligation) in their sole discretion to terminate this Settlement. If
23 Defendants exercise this right to terminate, the Settlement will be void ab initio and of no force or
24 effect, and will not be admissible in any judicial, administrative, or arbitral proceeding for any
25 purpose or with respect to any issue, substantive or procedural, and Defendants will pay the costs
26 incurred by the Settlement Administrator to date. If Defendants elect to exercise this option,
27 Defendants must inform Class Counsel in writing no later than 10 days after Response Deadline.
28

Section 3.05: Final Fairness and Approval Hearing

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action. Any failure by the Court to fully and completely approve the Agreement as to all of the Action, or the entry of any Order by another Court with regard to any of the Action which has the effect of modifying material terms of this Agreement as described above or preventing the full and complete approval of the Agreement as written and agreed to by the Parties, will result in this Agreement and all obligations under this Agreement being null and void.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay the Gross Settlement Amount in the amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00), subject to a potential pro rata increase under the condition set forth in Section 3.04(e). The Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement Amount, and the Incentive Award.

Within forty (40) days of the Date of Finality, Defendants shall transfer the Gross Settlement Amount plus Defendants' share of employer-side payroll taxes (provided that the administrator must provide at least ten days of advance notice of the amount of payroll taxes due), as set forth herein, into a QSF established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed. The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Award, the LWDA Payment, and the Settlement Administration Costs.

1 Within ten (10) calendar days after receiving Defendants' final payment, funding the Gross
2 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
3 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
4 Incentive Award, and employer and employee tax withholdings applicable to the Net Settlement
5 Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a
6 search based on the National Change of Address Database to update and correct for any known or
7 identifiable address changes.

8 **b. Payment of Attorneys' Fees and Costs**

9 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
10 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Eighty-
11 Three Thousand, Three Hundred Thirty-Three and Thirty-Three Cents (\$83,333.33). Class Counsel
12 shall submit an application for an award of costs not to exceed Twenty Thousand Dollars
13 (\$20,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final
14 Fairness and Approval Hearing. Defendants shall not object to or oppose any such application in
15 these amounts. Class Counsel shall serve Defendants with copies of all documents submitted in
16 support of their application for an award of attorneys' fees and costs.

17 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
18 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
19 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
20 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
21 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
22 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
23 will be reallocated to the Net Settlement Amount.

24 **c. Payment of Settlement Administration Costs**

25 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
26 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
27 Seven Thousand Dollars (\$7,000).
28

d. Payment of Incentive Award to Plaintiff

Subject to Court approval, the Plaintiff shall receive an Incentive Award of up to Ten Thousand Dollars (\$10,000.00), the request for which Defendants will not object to or oppose. The Incentive Award shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Plaintiff. To the extent that the Court approves less than the amount of incentive award that Class Counsel request, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

Because it is the intent of the Parties that the Incentive Award represent payment to Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099, which the Settlement Administrator will provide to Plaintiff and to the pertinent taxing authorities as required by law.

e. Payment to the Labor and Workforce Development Agency

In consideration of claims made under PAGA, Class Counsel will request that the Court approve allocation of Twenty Thousand Dollars (\$40,000) of the Gross Settlement Amount to these claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid to the Net Settlement Amount for distribution to PAGA Group Members. Defendants will not oppose this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount. If the Court requires that a larger portion of the GSA be allocated to the PAGA Settlement Amount, that shall not be a basis for Plaintiff to vitiate the Agreement and any additional amount required to be allocated to the PAGA Settlement Amount shall come from the GSA.

f. Payment of Individual Settlement Payments to Participating Class Members

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between all Participating Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member. To calculate the minimum amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total

number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class Member's approximate Individual Settlement Payment amount will be included in his or her Notice Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 20% allocated to wages; 40% allocated to interest, and 40% allocated to penalties. The PAGA Payments will be treated as 100% penalty payments. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms to the extent required.

No later than ten (10) days after receiving the Gross Settlement Amount from Defendants, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments. Participating Class Members shall have 180 days from the date their Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated (or, if required, a *cy pres* recipient to be mutually chosen by the Parties).

1 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
2 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
3 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
4 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
5 Settlement Administrator is unable to obtain a valid mailing address through this process, the
6 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
7 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

8 **g. Default on Payment.**

9 Defendants' failure to fund the Gross Settlement Amount within 40 days after the Date of
10 Finality of the Settlement shall be considered a default. In the event Defendants fail to timely fund
11 the Gross Settlement Amount, the Settlement Administrator will provide notice to Class Counsel and
12 Defendants' counsel within three (3) business days of the missed payment. Thereafter, Defendants
13 will have seven (7) days to cure the default and tender payment to the Settlement Administrator. In
14 the event Defendants fail to cure the default within the times set forth herein, Plaintiff may elect to
15 enter judgment against Defendants, on an ex parte basis, for the balance of the unpaid Gross
16 Settlement Amount to date, and Plaintiff will be entitled to recover interest at ten percent (10%) per
17 year from the due date for such payment and reasonable attorneys' fees and costs.

18 **h. No Credit Toward Benefit Plans.**

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

ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendants dispute the allegations in the Action and argue that, but for this Settlement, a Class should not have been certified in the Action. This Agreement is entered into solely for the purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendants.

Section 4.02: Non-Evidentiary Use

Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims released through this Agreement.

Section 4.03: Nullification

The Parties have agreed to the certification of the Class encompassing all claims alleged in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action pled in the Action as part of the Settlement will

1 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
2 should be certified by the Court in a non-settlement context in this Action or any other action, and in
3 any of those events, Defendants expressly reserve the right to oppose certification of the Class.

4 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
5 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

6 **Section 4.04: Confidentiality**

7 Except for purposes of enforcing the Settlement to the extent necessary, the terms of this
8 Settlement will be kept confidential until they are filed with the Court for preliminary approval. Class
9 Counsel shall do nothing to publicize this Settlement or use it for marketing purposes, including on
10 websites and on the Internet and in any form of electronic or non-electronic press, although this
11 provision shall not be construed to interfere with Class Counsel's communications with Class
12 Members and will not preclude Class Counsel from referring to the Settlement in any future Court
13 filings in support of class certification and/or prevailing party attorney's fees and/or settlement
14 approval.

15 **ARTICLE V**

16 **RELEASES**

17 **Section 5.01: Released Claims by Class Members**

18 Upon the date Defendants transfer the Gross Settlement Amount, Plaintiff and Participating
19 Class Members who do not opt out of the Settlement, on behalf of themselves, as well as on behalf
20 of all of their heirs, successors in interest, assigns, transferees, and, grantees, fully and forever
21 release, acquit, and discharge the Released Parties from all claims alleged or that could have been
22 alleged based on the facts alleged in the Action, which arose during the Class Period, as well as any
23 claim for attorney's fees and costs related to those claims ("Released Claims"), which include but
24 are not limited to all such claims arising under Labor Code sections 203, 204, 210, 226, 226.7, 510,
25 512, 1182.12, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure section 1021.5, any
26 corresponding California Wage Order provisions, any claim for failure to provide proper meal or rest
27 breaks, timely payment of wages, or failure to pay compensation at the proper amount, and any claim
28 for Violation of Business and Professions Code section 17200, *et seq.* predicated on the foregoing

1 violations. The doctrines of res judicata, claim preclusion, issue preclusion, primary rights, and
2 collateral estoppel shall fully and broadly apply to the Released Class Claims and the releases in this
3 Settlement to the greatest extent permitted by law.

4 **Section 5.02: Released Claims by PAGA Group Members**

5 Upon the date of funding the GSA, the State of California and PAGA Group Members release
6 the Released Parties from all claims alleged or that could have been alleged based on the facts alleged
7 in Plaintiff's notice(s) sent to the LWDA and alleged in the Action, which arose during the PAGA
8 Period, regardless of whether PAGA Group Members opt out of the Class Settlement. The doctrines
9 of res judicata, claim preclusion, issue preclusion, primary rights, and collateral estoppel shall fully
10 and broadly apply to this release.

11 **Section 5.03: Plaintiff's Release of Unknown Claims**

12 Upon the date of funding the GSA, Plaintiff waives, releases, acquits, and forever discharges
13 the Released Parties from any and all claims, actions, charges, complaints, grievances, and causes of
14 action, of any nature arising from Plaintiff's employment with Defendants, whether known or
15 unknown, which exist or may exist as of the Parties' execution of this Agreement.

16 Section 1542 of the California Civil Code provides as follows:

17 *"A general release does not extend to claims that the creditor or releasing*
18 *party does not know or suspect to exist in his or her favor at the time of*
19 *executing the release and that, if known by him or her, would have*
20 *materially affected his or her settlement with the debtor or released party."*

21 Plaintiff's general release provided herein is made with an express waiver and relinquishment
22 of any claim, right, or benefit under California Civil Code § 1542.

23 Plaintiff acknowledges that he is waiving and releasing any rights he may have under the Age
24 Discrimination in Employment Act of 1967 ("ADEA"), and that this waiver and release is knowing
25 and voluntary. Plaintiff agrees that this waiver and release does not apply to any rights or claims that
26 may arise under the ADEA after the effective date of this Agreement. Plaintiff further acknowledges
27 that he has been advised by this writing that: (a) Plaintiff should consult with an attorney prior to
28 executing this Agreement (and has done so); (b) Plaintiff has twenty-one (21) days within which to

1 consider this Agreement; (c) Plaintiff has seven (7) days following their execution of this Agreement
2 to revoke this Agreement; (d) this Agreement shall not be effective until after the revocation period
3 has expired; and (e) nothing in this Agreement prevents or precludes Plaintiff from challenging or
4 seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it
5 impose any condition precedent, penalties, or costs for doing so, unless specifically authorized by
6 federal law. Plaintiff acknowledges and understands that revocation must be accomplished by a
7 written notification to the person executing this Agreement on the Defendants' behalf that is received
8 prior to the eighth day after Plaintiff signs this Agreement. The Parties agree that changes, whether
9 material or immaterial, do not restart the running of the 21-day period.

10 **ARTICLE VI**

11 **MISCELLANEOUS PROVISIONS**

12 **Section 6.01: Amendments or Modification**

13 The terms and provisions of this Agreement may be amended or modified only by an express
14 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
15 and approved by the Court.

16 **Section 6.02: Assignment**

17 None of the rights, commitments, or obligations recognized under this Agreement may be
18 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
19 consent of each other Party and their respective counsel. The representations, warranties, covenants,
20 and agreements contained in this Agreement are for the sole benefit of the Parties under this
21 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

22 **Section 6.03: Governing Law**

23 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
24 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
25 of laws.

26 **Section 6.04: Entire Agreement**

27 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
28 contains the entire understanding of the Parties with respect to the subject matter contained herein.

1 In case of any conflict between text contained in Articles I through VI of this Agreement and text
2 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
3 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
4 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
5 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
6 supersedes all prior agreements and understandings among the Parties with respect to the settlement
7 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
8 prior agreements or proposals.

9 **Section 6.05: Waiver of Compliance**

10 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
11 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
12 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
13 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
14 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
15 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

16 **Section 6.06: Counterparts and Fax/PDF Signatures**

17 This Agreement, and any amendments hereto, may be executed in any number of counterparts
18 and any Party and/or their respective counsel may execute any such counterpart, each of which when
19 executed and delivered shall be deemed to be an original. All counterparts taken together shall
20 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
21 signature.

22 **Section 6.07: Meet and Confer Regarding Disputes**

23 Should any dispute arise among the Parties or their respective counsel regarding the
24 implementation or interpretation of this Agreement, a representative of Class Counsel and a
25 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
26 to submitting such disputes to the mediator and/or Court.

1 **Section 6.08: Agreement Binding on Successors**

2 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
3 of each of the Parties.

4 **Section 6.09: Cooperation in Drafting**

5 The Parties have cooperated in the negotiation and preparation of this Agreement. This
6 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
7 was the drafter or participated in the drafting of this Agreement.

8 **Section 6.10: Fair and Reasonable Settlement**

9 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
10 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
11 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
12 further believe that the Settlement is consistent with public policy, and fully complies with applicable
13 law.

14 **Section 6.11: Headings**

15 The descriptive headings of any section or paragraph of this Agreement are inserted for
16 convenience of reference only and do not constitute a part of this Agreement and shall not be
17 considered in interpreting this Agreement.

18 **Section 6.12: Notice**

19 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
20 communications under this Agreement must be in writing and addressed as follows:

21 *To Plaintiff and the Class:*

22 Kashif Haque
23 Samuel A. Wong
24 Jessica L. Campbell
25 Namrata Kaur
26 AEGIS LAW FIRM, PC
27 9811 Irvine Center Drive, Suite 100
28 Irvine, California 92618
 Telephone: (949) 379-6250
 Facsimile: (949) 379-6251

 And

To Defendants:

GOODWIN PROCTER LLP
Joseph P. Rockers
100 Northern Avenue
Boston, Massachusetts 02210
Telephone: (617) 570-1000
Facsimile: (617) 523-1231

GOODWIN PROCTER LLP
Philip B. Baldwin
Ashton L. O'Halloran
Three Embarcadero Center, 28th Floor
San Francisco, CA 94110-4003
Telephone: (415) 733-6000
Facsimile: (415) 677-9041

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In the event 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 the Settlement, the Parties agree to seek the assistance of the mediator and/or Court.

Section 6.15: Authorization to Act

Class Counsel warrant and represent that they are authorized by Plaintiff, and Defense Counsel warrant that they are authorized by Defendants, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not limited to this Agreement, that are required to be signed by the Parties themselves. Defendants represent and warrant that the individuals executing this Agreement on their behalf have the full right, power, and authority to enter into this Agreement and to carry out the transactions contemplated herein.

Section 6.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

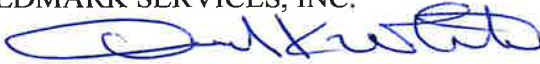
Dated: 8/14/2023 _____

ROSS ALBAUGH

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Ross Albaugh
By: _____
Plaintiff

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MEDMARK SERVICES, INC.



(Signature)

Dated: September 1, 2023

David K. White

(Printed Name)

President

(Title)

MEDMARK TREATMENT CENTERS
STOCKTON, INC.

By: 

(Signature)

David K. White

(Printed Name)

Vice President

(Title)

Dated: September 1, 2023

APPROVED AS TO FORM ONLY:

Dated: _____

AEGIS LAW FIRM, PC

By: _____

Jessica L. Campbell
Attorneys for Plaintiff

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MEDMARK SERVICES, INC.

Dated: _____

(Signature)

(Printed Name)

(Title)

MEDMARK TREATMENT CENTERS
STOCKTON, INC.

Dated: _____

By: _____
(Signature)

(Printed Name)

(Title)

APPROVED AS TO FORM ONLY:

Dated: 09/06/2023

AEGIS LAW FIRM, PC

By: Namrata Kaur
Jessica L. Campbell
Namrata Kaur
Attorneys for Plaintiff

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Dated: September 1, 2023

GOODWIN PROCTER LLP

By: 
Joseph P. Rockers
Philip B. Baldwin
Ashton L. O'Halloran

Attorneys for Defendants Medmark Services,
Inc.; Medmark Treatment Centers – Stockton,
Inc.