

CROSNER LEGAL, P.C.

Michael Crosner (SBN: 41299)
mike@crosnerlegal.com
Zachary Crosner (SBN: 272295)
zach@crosnerlegal.com
433 N Camden Dr., Ste. 400
Beverly Hills, CA 90210
Telephone: (310) 496-5818
Fax: (310) 510-6429

Attorneys for Plaintiffs

DAWN T. COLLINS, CA Bar No. 193447
dawn.collins@ogletreedeakins.com
TAE KIM, CA Bar No. 210465
tae.kim@ogletreedeakins.com
MARISSA ALGUIRE, CA Bar No. 249755
marissa.alguire@ogletreedeakins.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213.239.9800
Facsimile: 213.239.9045

Attorneys for Defendant
DEVELOPMENTAL CLIENT CARE INDUSTRIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ASHLEY MCCORD, individually, and on
behalf of all similarly situated,

Plaintiffs,

vs.

DEVELOPMENTAL CLIENT CARE,
INDUSTRIES, ICN., and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RIC1612928

PAGA SETTLEMENT AGREEMENT

1 **PAGA SETTLEMENT AGREEMENT**

2 Subject to Court approval by the Superior Court of the State of California for the County of
3 Riverside ("Court"), Plaintiff Ashley McCord ("Plaintiff") and Defendant Developmental Client Care
4 Industries, Inc. ("Defendant") (collectively with Plaintiff, the "Parties") hereby agree to the following
5 binding settlement ("Settlement" or "Settlement Agreement") of the lawsuit entitled *McCord v.*
6 *Developmental Client Care Industries, Inc.*, Case No. RIC1612928 (Riverside County Superior Court
7 October 4, 2016) (the "Action").

8 **PERSONS COVERED BY THE SETTLEMENT**

9 1. Aggrieved Employees: This Settlement covers all current and former non-exempt
10 employees of Defendant who, during the "Settlement Period": (i) worked split shifts, but were not paid
11 all associated split shift premiums; (ii) received wages more than seven (7) days after the close of
12 Defendant's pay period; (iii) received inaccurate wage statements from Defendant, as a result of unpaid
13 split shift premiums; and/or (iv) did not receive all wages owed at the time of their termination or
14 resignation, as a result of unpaid split shift premiums.

15 2. Settlement Period: The Settlement Period starts on September 1, 2015 and continues
16 through the date of the Order approving the parties' Stipulation of Settlement.

17 **SETTLEMENT CONSIDERATION**

18 3. Maximum Settlement Amount: Defendant will pay a maximum of One Hundred Fifty-
19 One Thousand Dollars One Hundred Thirty-Seven Dollars and Zero Cents (\$151,137.00) ("Maximum
20 Settlement Amount") to settle this Action, which includes settlement payments to Aggrieved Employees,
21 Plaintiff's Service Award, Attorneys' Fees and Costs, a payment to the California Labor and Workforce
22 Development Agency ("LWDA"), and Settlement Administration costs.

23 4. Net Settlement Fund. After deducting Plaintiff's Service Award, Plaintiff's Attorneys'
24 Fees and Costs, and Settlement Administration Costs, the balance of the Maximum Settlement Amount
25 (the "Net Settlement Fund") will be distributed as follows: 25% will be treated as wages, subject to
26 payroll tax withholding, the employer's side of said taxes to be paid by Defendant and distributed to the
27 Aggrieved Employees, and the remaining 75% of the Net Settlement Fund shall be distributed 25% to
28 the Aggrieved Employees and 75% of the Net Settlement Fund shall be paid to the LWDA. Of the

1 portion paid to Aggrieved Employees, the amounts will be subject to the distribution formula agreed
2 upon by the Parties. Any leftover funds remaining after the reductions listed in this paragraph, shall go
3 the Net Settlement Fund and shall not revert back to Defendant. The portions of the Net Settlement Fund
4 to be distributed to the Aggrieved Employees, as described in this Paragraph ("Aggrieved Employee
5 Fund"), shall be paid according to the following formula: *Settlement Payment to each Aggrieved
6 Employee = (Aggrieved Employee Fund x Pay Periods Worked by Each Individual Aggrieved Employee
7 During Settlement Period) ÷ Total Pay Periods Worked by All Aggrieved Employees during the
8 Settlement Period.*

9 5. Attorneys' Fees and Costs: In full satisfaction of all claims Plaintiff may have for
10 attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agrees to pay
11 Plaintiff's counsel, Crosner Legal, P.C. ("Plaintiff's Counsel"), a total of Fifty Thousand Three Hundred
12 Twenty Eight Dollars and Sixty Two Cents (\$50,328.62) in attorneys' fees, as well as additional
13 litigation costs and expenses in an amount not to exceed Ten Thousand Dollars and zero cents
14 (\$10,000.00).
15 ("Attorneys' Fees and Costs"), from the Maximum Settlement Amount.

16 6. Plaintiff's Service Award: In recognition of her effort and work in prosecuting the
17 Action for the benefit of the State of California and Aggrieved Employees, and for a general release of
18 all claims she may have against Defendant, Defendant agrees to pay Plaintiff Ten Thousand Dollars and
19 Zero Cents (\$10,000.00) ("Plaintiff's Service Award") from the Maximum Settlement Amount, subject
20 to issuance of a Form 1099, in addition to her share of the Aggrieved Employee Fund as determined
21 under Paragraph 4. Plaintiff shall assume full responsibility and liability for payment of taxes due on
22 Plaintiff's Service Award. Upon payment of Plaintiff's Service Award, Plaintiff for herself and her heirs,
23 successors, assigns, will be deemed to have fully released and discharged Defendant, and each of its
24 respective past and present divisions, parent companies, affiliates, related companies, joint ventures,
25 subsidiaries, owners, shareholders, partners, members, directors, officers, employees, agents, principals,
26 representatives, investors, attorneys, personal or legal representatives, insurers, co-insurers, re-insurers,
27 administrators, assigns, successors, and predecessors (collectively, the "Defendant Releasees") from any
28 and all claims, demands, obligations, causes of action, rights, charges, complaints, promises, agreements,

1 controversies, damages, actions, suits, costs, losses, debts and expenses, or liabilities of any kind
2 whatsoever, known or unknown, suspected or unsuspected, which Plaintiff or her heirs, successors, or
3 assigns may have against the Defendant Releasees based on any actions or events which occurred prior
4 to the execution of this agreement, including but not limited to claims for wages, restitution, penalties,
5 retaliation, defamation, discrimination, harassment or wrongful termination of employment. This
6 release specifically includes any and all claims, demands, obligations and/or causes of action for
7 damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement)
8 relating to or in any way connected with the matters referred to herein, whether or not known or
9 suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiff
10 will be deemed to have waived all rights and benefits afforded by California Civil Code Section 1542,
11 which provides:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
13 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
14 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
15 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

16 7. Settlement Administration. The Parties will retain Simpluris Inc. or any other third-party
17 settlement administrator approved by the Parties ("Settlement Administrator"), to administer this
18 Settlement. The Settlement Administrator will be responsible for establishing a qualified settlement fund
19 ("QSF") from the Maximum Settlement Amount paid by Defendant, and issuing payments and
20 appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's counsel. The fees
21 and costs of the Settlement Administrator shall be paid from the QSF ("Settlement Administration
22 Costs") in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00).

23 8. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
24 will present this Settlement Agreement to the Court and will request that the Court issue an order and
25 judgment approving and incorporating by reference the terms and conditions of the Settlement
26 Agreement (the "Order and Judgment"). Simultaneously, Plaintiff's counsel will submit a copy of the
27 executed Settlement Agreement to the LWDA. Upon approval of the Order and Judgment, Plaintiff's
28 counsel will submit a copy of the Order and Judgment to the LWDA.

1 9. Installment Funding of the Settlement. After the Court enters the Order and Judgment,
2 Defendant will deposit Fifty Percent (50%) of the Maximum Settlement Amount into the QSF by no
3 later than March 18, 2018 ("First Installment Payment"); Defendant will thereafter deposit the remaining
4 Fifty Percent (50%) of the Maximum Settlement Amount into the QSF by no later than July 18, 2018
5 ("Second Installment Payment") (collectively referred to as the "Installment Payments"). Within
6 fourteen (14) calendar days of the First Installment Payment and of the Second Installment Payment, the
7 Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the LWDA; (c)
8 Plaintiff; (d) Plaintiff's counsel, and (e) itself. The Settlement Administrator, and not Defendant, will
9 issue the appropriate tax forms for all payments issued under this Settlement.

10 10. Non-Installment Funding of the Settlement. The Parties agree that if two Installment
11 Payments by the Settlement Administrator cause the Settlement Administration Costs to exceed Ten
12 Thousand Dollars and Zero Cents (\$10,000.00), then the Settlement Administrator will not issue any
13 payments following Defendant's deposit of the First Installment Payment. The Settlement Administrator
14 will only issue payments to (a) Aggrieved Employees; (b) the LWDA; (c) Plaintiff; (d) Plaintiff's
15 counsel; and (e) itself, within fourteen (14) calendar days following Defendant's deposit of the Second
16 Installment Payment.

17 11. No Opt-Out or Objection to the Settlement. Because the requirements of class
18 certification do not apply to PAGA representation actions (*see Arias v. Super. Ct.*, 46 Cal. 4th 969
19 ([2009])), it is understood and agreed that the Aggrieved Employees shall not be afforded an opportunity
20 to opt out of, or object to, the Settlement.

21 12. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
22 each Aggrieved Employees a check for her or her share of the Aggrieved Employee Fund, as calculated
23 under Paragraph 4, along with an explanatory letter which will be mutually approved by the parties,
24 explaining, *inter alia*, that the Settled Claims are barred by operation of the Settlement. Checks will
25 remain negotiable for 120 days. Any checks returned as non-deliverable on or before the check cashing
26 deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
27 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to
28 determine the correct address using a skip-trace, or other search using the name, address or Social

1 Security number of the Aggrieved Employees involved, and will then perform a single re-mailing.
2 Funds represented by settlement checks returned as undeliverable and those settlement checks remaining
3 un-cashed for more than 120 days after issuance will be tendered to the California Department of
4 Industrial Relations Unpaid Wage Fund (see Cal. Lab. Code § 96.6). All settlement payments to
5 Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued. Plaintiff
6 and Aggrieved Employees, and not Defendant, shall assume full responsibility and liability for payment
7 of any taxes due on such settlement payments, if any.

8 13. Settled Claims. Upon entry of the Order and Judgment, Plaintiff and all Aggrieved
9 Employees will be forever barred from pursuing against Defendant, or any of them, any and all claims,
10 causes of action, charges, complaints or suits for civil and statutory penalties recoverable under PAGA
11 related to violations of the California Labor Code, Wage Orders, regulations, and/or other provisions of
12 law that were alleged, or could have been alleged in the Action during the Settlement Period with respect
13 to Aggrieved Employees based on the facts alleged in Plaintiff's operative Complaint, and all claims and
14 causes of action alleged in the Complaint, including: (i) failure to pay split shift premiums; (ii) failure to
15 timely pay wages after the close of each pay period; (iii) inaccurate wage statements, as a result of unpaid
16 split shift premiums; (iv) failure to pay all outstanding wages at separation, as a result of unpaid split shift
17 premiums; and (v) the alleged violation of, or claims for relief pursuant to, Labor Code sections 201,
18 202, 203, 204, 210, 226, 226.3, 512, 558, and 1174, as well as California Code of Regulations, Title 8,
19 section 11050(4)(C) and IWC Wage Order 5-2001, Section 4(C). Plaintiff is bound by a complete
20 Section 1542 release and waiver of all claims known or unknown, except as may be prohibited by law.
21 Aggrieved Employees, other than Plaintiff, will not be deemed to have released any other individual
22 wage and hour claims by virtue of this Settlement.

23 14. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
24 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
25 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
26 action or right herein released and discharged.

27 15. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
28 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then

1 this Settlement Agreement will be null and void, and the Parties will be returned to their original
2 respective positions pursuant to the terms of the Memorandum of Agreement entered into by the Parties
3 on October 18, 2017.

4 16. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
5 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
6 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters
7 as may be appropriate under court rules or as set forth in this Settlement.

8 17. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
9 settlement terms. Apart from the Memorandum of Agreement entered into by the Parties on October 17,
10 2017, no other prior or contemporaneous written or oral agreements may be deemed binding on the
11 Parties.

12 18. Amendment or Modification. This Settlement Agreement may be amended or modified
13 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
14 Parties.

15 19. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
16 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
17 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
18 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
19 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
20 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
21 unable to reach agreement on the form or content of any document needed to implement the Settlement,
22 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,
23 the Parties may seek the assistance of the Court to resolve such disagreement.

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

26 21. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
27 will be governed by and interpreted according to the laws of the State of California.

28 22. Execution and Counterparts. This Settlement Agreement is subject only to the execution

1 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them, including facsimile and scanned copies of the signature page,
3 will be deemed to be one and the same instrument provided that counsel for the Parties will exchange
4 among themselves original signed counterparts.

5 23. Acknowledgement that the Settlement is Fair and Reasonable. Defendant has produced
6 and Plaintiff has received and reviewed data pertaining to the hours worked by and wages paid
7 Aggrieved Employees, in addition to the applicable number of work weeks and shifts. The Parties
8 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
9 arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties agree that
10 Plaintiff and her counsel have sufficient information to assess this matter for settlement and have
11 engaged in sufficient investigation and informal and formal discovery to assess the relative merits of
12 Plaintiff's claims and Defendant's defenses to them.

13 24. The Parties further acknowledge that they are each represented by competent counsel
14 and that they have had an opportunity to consult with their counsel regarding the fairness and
15 reasonableness of this Settlement.

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

20 26. Captions. The captions and section numbers in this Settlement Agreement are inserted
21 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
22 provisions of this Settlement Agreement.

23 27. Waiver. No waiver of any condition or covenant contained in this Settlement
24 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
25 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or
26 remedy.

27 28. Enforcement Action. In the event that one or more of the Parties institutes any legal
28 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement

1 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
2 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
3 expert witness fees incurred in connection with any enforcement actions.

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

9 30. Representation By Counsel. The Parties acknowledge that they have been represented
10 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
11 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
12 in full.

13 31. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
14 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
15 Settlement Agreement.

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

21 33. Denial of Liability. The Parties expressly recognize that the making of this agreement
22 does not in any way constitute an admission or concession of wrongdoing on the part of any of the
23 Defendant, and Defendant expressly denies any liability to Plaintiff and the Aggrieved Employees.
24 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
25 discussions or communications, nor any materials prepared, exchanged, issued or used during the course
26 of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be
27 used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other
28 forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,

1 regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the
2 foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the
3 interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court
4 entered into in connection therewith.

5 **READ CAREFULLY BEFORE SIGNING**

7 **PLAINTIFF**

8 Dated: 12/28/2017


9 Plaintiff Ashley McCord

11 **DEFENDANT DEVELOPMENTAL CLIENT
CARE INDUSTRIES, INC.**

12 Dated: x 1/4/18

x 
13 CHARLES ROWE, President
14 Please Print Name of Authorized Signatory

15 **APPROVED AS TO FORM**

16 **CROSNER LEGAL, P.C.**

17 Dated: 12 / 28 / 2017


18 Zachary Crosner, Esq.

19 Counsel of record for Plaintiff Ashley McCord

21 **OGLTREE DEAKINS, NASH, SMOAK & STEWART, P.C.**

22 Dated: 1/4/2018


23 Marissa Alguire, Esq.

24 Counsel of record for Defendant Developmental
25 Client Care Industries, Inc.

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