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JENAE HEITKAMP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

Case No: CGC-25-626072

JENAE HEITKAMP, on behalf of herself,
and all aggrieved employees,

*Assigned to the Honorable
Jeffrey S. Ross, Dept. 613*

Plaintiff,

REPRESENTATIVE ACTION

v.

**SUPPLEMENTAL DECLARATION OF
ROBERT W. SPENCER IN SUPPORT OF
MOTIONS FOR AN ORDER APPROVING
SETTLEMENT OF PAGA ACTION AND
DISMISSING ACTION WITH PREJUDICE
AND FOR AN ORDER AWARDING
ATTORNEYS' FEES AND COSTS,
ENHANCEMENT PAYMENT, AND
SETTLEMENT ADMINISTRATION FEES**

BRIGHTSIDE HEALTH, INC., and DOES 1
through 50, inclusive,

Defendants.

Date: October 9, 2026
Time: 9:00 a.m.
Dept. 613

Trial Date: TBD
Complaint filed: June 9, 2025

1 I, ROBERT W. SPENCER, declare as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California and
3 before this Court. I am a senior associate with the law firm Keller Grover LLP, co-counsel for
4 Representative Plaintiff Jenae Heitkamp in this action. I have personal knowledge of the facts
5 stated herein and, if called as a witness, I could and would testify competently to the facts set forth
6 below.

7 2. I submit this supplemental declaration to address the items raised in the Court's
8 Order Requesting Supplemental Briefing dated September 1, 2026 ("Order").

9 3. A true and correct fully executed Amended Labor Code Private Attorneys General
10 Act Settlement Agreement ("Amended Settlement Agreement") is attached hereto as **Exhibit 9.**¹
11 A true and correct redlined version of the Amended Settlement Agreement is attached hereto as
12 **Exhibit 10.**

13 4. **Definition of PAGA Group:** The Parties have adjusted to the definition of the
14 "PAGA Group" after comparing it to the Los Angeles Superior Court Model Paga Settlement
15 Agreement ("L.A. Model PAGA Settlement").² The definition of "PAGA Group" now reads: "The
16 PAGA Group means all persons engaged by Defendant in California and classified as an
17 independent contractor remote therapist who performed services for Defendant during the PAGA
18 Release Period."³

19 5. **Release:** The Parties have adjusted the release language to address the Court's
20 concerns. The Parties have utilized the language contained in the L.A. Model PAGA Settlement
21 with minor adjustments.⁴ For the convenience of the Court, I personally created a redline
22

23 ¹ Exhibits 1 through 8 are attached to the Declaration of Robert Spencer Declaration in Support of
24 Motions for an Order Approving Settlement of PAGA Action and Dismissing Action with
25 Prejudice and for an Order Awarding Attorneys' Fees and Costs, Enhancement Payment, and
26 Settlement Administration Fees ("Spencer Decl."), filed July 17, 2026. Exhibits 9-11 are attached
27 to this declaration, which shall be referred to as the "Supp. Spencer. Decl."

28 ² I personally downloaded the L.A. Model PAGA Settlement from the website
[https://www.lacourt.ca.gov/pages/lp/civil/tp/civil-case-types-and-specialty-
courtrooms/cp/complex-civil-litigation](https://www.lacourt.ca.gov/pages/lp/civil/tp/civil-case-types-and-specialty-courtrooms/cp/complex-civil-litigation).

³ Supp. Spencer Decl. Exs. 9 & 10 at § II.K.

⁴ *Id.* at § VI.

1 comparison of the release language contained in the L.A. Model Settlement and the Amended
2 Settlement Agreement, it is attached as **Exhibit 11**.

3 6. Minor adjustments have been made to the release from the LA Model PAGA
4 Settlement to make the defined terms consistent in the Amended Settlement Agreement. The
5 Parties changed the reference from “Aggrieved Employees,” “PAGA Counsel,” and “PAGA
6 Period” in the L.A. Model PAGA Settlement so they match the title of the defined terms “PAGA
7 Group,” “Plaintiff’s Counsel,” and “PAGA Release Period” in the Amended Settlement
8 Agreement.⁵ The Parties also inserted the definition of “Released Parties” into the release language
9 contained Amended Settlement Agreement.⁶ This is a minor difference of where the definition is
10 located. In the LA Model PAGA Settlement it is a definitions section, here it is defined in the
11 release section. This keeps Plaintiff Counsel’s citations to the settlement consistent with the
12 opening brief.

13 7. **Check Cashing Period:** Pursuant to the Court’s Order, the parties changed the
14 check cashing period from 150 days to 180 days.⁷

15 8. **Misc. Corrections to Amended Settlement Agreement and Notice:** Pursuant to
16 the Court’s Order, the Parties fixed the typographical error with the extra dollar sign in section
17 VII.⁸ The Parties also fixed a minor inconsistency to make undeliverable checks go to the
18 California’s unclaimed property fund in the applicable PAGA Group member’s name rather than
19 to the LWDA.⁹

20 9. In the notice, the Parties edited the definition of PAGA Group member to make it
21 consistent with the settlement agreement, corrected a typographical error with the word
22 “Therapists,” changed the check cashing period to 180 days, and revised the release to make it
23 match the language contained in the Amended Settlement Agreement.¹⁰ The Parties also corrected
24

25 ⁵ Supp. Spencer Exs. 9 and 10 at §§ II.K, II.L, II.N and VI, *see also* Supp. Spencer Ex. 11 (redline
of release).

26 ⁶ Supp. Spencer Exs. 9 and 10 at § VI. *See also*, Supp. Spencer Ex. 11.

27 ⁷ Supp. Spencer Exs. 9 and 10 at § IX(B).

28 ⁸ *Id.* at § VII.

⁹ *Id.* at § VIII.

¹⁰ *Id.* at Ex. A (Notice).

a typographical error with a date contained with the PAGA Release Period contained in the notice.¹¹

10. **Declaration from Settlement Administrator:** In compliance with the Court's Order, Plaintiff is filing concurrently herewith the Declaration of Michael Moore in Support of Motions for An Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice and for an Order Awarding Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Fees ("Moore Decl."). Michael Moore is the President and Managing Partner of Phoenix Settlement Administration, the chosen settlement administrator in this action.¹² The Moore Decl. attaches Phoenix Settlement Administration's bid as Exhibit B, which confirms Phoenix Settlement Administrators is performing the work for a flat fee of \$4,000.

11. **Attorneys' Fees:** In response to the Court's Order, Plaintiff's Counsel is submitting the Supplemental Declaration of Alex P. Katofsky in Support of Motions for an Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice and for an Order Awarding Attorneys' Fees and Cost, Enhancement Payment and Settlement Administration Fees ("Supp. Katofsky Decl."). Mr. Katofsky did not track his time as he is the referring attorney.¹³ Pure referral agreements are legal in California, even if the referring attorney performs no work. *Chambers v. Kay* (2002) 29 Cal. 4th 142, 147-150, *see also, Moran v. Harris* (1982) 131 Cal. App. 3d 913, 920-922 (examining policy reasons for allowing "pure" referral agreements in California where a referring attorney performs no work).

12. Additionally, the executive summary of Rules of Professional Conduct, Rule 1.5.1 notes that California allows pure referral fees, "The California rule is one of a minority of states that permits a "pure referral fee," i.e., California permits lawyers to be compensated for referring a matter to another lawyer without requiring the lawyers continued involvement in the matter." For the convenience of the Court, I have attached Rule 1.5.1, including the executive summary, as **Exhibit 12.** I personally downloaded Rule 1.5.1 from the website

¹¹ *Id.*

¹² Moore Decl. at ¶ 2, Ex. 9 at II.O (Amended Settlement Agreement).

¹³ Supp. Katofsky Decl., filed concurrently herewith, at ¶¶ 3-7.

1 [https://www.calbar.ca.gov/sites/default/files/portals/0/documents/rules/Rule_1.5.1-](https://www.calbar.ca.gov/sites/default/files/portals/0/documents/rules/Rule_1.5.1-Exec_Summary-Redline.pdf)
2 [Exec_Summary-Redline.pdf](https://www.calbar.ca.gov/sites/default/files/portals/0/documents/rules/Rule_1.5.1-Exec_Summary-Redline.pdf).

3 13. I previously provided a true and correct copy of the fee sharing agreement as Exhibit
4 7.¹⁴ The fee sharing agreement holds that the Law Offices of Alex P. Katofsky shall be paid a
5 referral fee of 33.33% of the total attorney's fees collected with respect to this case.¹⁵ The
6 remainder goes to Keller Grover LLP. Mr. Katofsky's fees are not contingent on the work
7 performed, thus it is a "pure referral fee."¹⁶

8 14. In compliance with Rule 1.5.1, Plaintiff Heitkamp approved and signed this fee
9 sharing agreement on February 26, 2025.¹⁷ Rule 1.5.1 is satisfied.

10 15. Mr. Katofsky previously provided an estimate of his hours worked in this action
11 because I asked him to. It was my understanding that the Court wanted to see all the attorneys'
12 hours in this action, thus I asked Mr. Katofsky to do so. I did so even though there is a pure referral
13 fee agreement in this action.

14 16. Mr. Katofsky's hours do not materially affect the lodestar in this action. As noted in
15 Plaintiffs' fee motion, the lodestar for Keller Grover LLP through July 7, 2026 is \$113,420, and
16 Keller Grover expected to incur another \$8,000 in fees for a total final lodestar of \$121,420, an
17 amount that represents a negative multiplier of approximately 0.53.¹⁸ Adding in an additional
18 lodestar of approximately \$12,000 for Mr. Katofsky's time creates a combined lodestar of \$133,
19 420.¹⁹ This results in a negative multiplier of approximately 0.49.²⁰ This is a negligible difference
20 given the fact that the lodestar for Keller Grover LLP's time spent on the case is deeply in the
21
22

23 _____
24 ¹⁴ Spencer Decl. Ex. 7.

25 ¹⁵ *Id.*

26 ¹⁶ *Id.*

27 ¹⁷ *Id.*

28 ¹⁸ Memorandum of Points and Authorities in Support of Motion for an Order Approving Attorneys' Fees, Costs, Enhancement Payment, and Settlement Administration Fees, filed September 17, 2026, at 15:10-15, Spencer Decl. at ¶¶ 33-39.

¹⁹ *Id.*

²⁰ *Id.*

negative. Further, my original loadstar calculations separated Mr. Katofsky's hours from the hours worked by Keller Grover LLP so the loadstar could easily be reviewed by the Court.²¹

17. **Service Award:** Plaintiff Heitkamp is submitting concurrently herewith the Supplemental Declaration of Janae Heitkamp in Support of Motions for an Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice and for an Order Awarding Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Fees ("Supp. Heitkamp Decl."). Plaintiff Heitkamp spent approximately 21 hours and 45 minutes working on this action.²² Her time includes tasks such as generally following the status of the litigation, being interviewed by Plaintiff's Counsel, searching for documents related to this case, answering questions to assist Plaintiff's Counsel's drafting the PAGA letter and reviewing the PAGA letter before it was filed, answering questions to assist Plaintiff's Counsel in drafting the Complaint and reviewing the Complaint before it was filed, answering questions to assist Plaintiff's Counsel in drafting the PAGA early evaluation statement, attending the PAGA early evaluation conference, attending the follow-up conference, and reviewing the settlement agreement.²³

18. Plaintiff's Counsel seeks a \$5,000 service award for Plaintiff Heitkamp.²⁴ This represents three percent of the total \$195,000 settlement amount in this action.²⁵

19. It should also be noted that Plaintiff Heitkamp has provided a general release of her claims.²⁶ By doing so, Plaintiff gave up her right to pursue a separate damages lawsuit against Defendant. Individual damages in an independent contractor misclassification case can be substantial, particularly as Plaintiff is in a highly compensated profession.

²¹ *Id.*

²² Supp. Heitkamp Decl. at ¶¶ 5-13. For the ease of the Court's review, the Supp. Heitkamp Decl. provides a table summarizing her time spent in this action at ¶ 13.

²³ *Id.*

²⁴ Supp. Spencer Decl. Ex. 9 at § XIII (Amended Settlement Agreement).

²⁵ *Id.* at § [insert]

²⁶ \$5,000 is three percent of the \$195,000 settlement amount. *Id.* at §§ II.P (Settlement Amount), XIII (Enhancement to Plaintiff).

20. For example, Plaintiff estimates in her PAGA letter that she spent approximately 20 minutes per work day responding to work related emails, which was unpaid.²⁷ She could potentially seek \$8,400 in damages for time for unpaid work-related emails alone.

21. This is calculated as follows: Plaintiff worked for Defendant from approximately February 2023 through January 2025 in Orange County, California.²⁸ During this period, she worked typically worked four days a week for approximately 90 weeks total.²⁹ This equates to approximately 120 hours of unpaid time.³⁰ Utilizing a reasonable rate of \$70 an hour, the rate she was paid by Defendant for an appointment with an existing patient, her potential for damages for reading and responding to emails could potentially reach \$8,400.³¹

22. Plaintiff Heitkamp alleges numerous additional claims in her PAGA letter, including unpaid time for time spent filling out case notes, creating treatment plans, completing mandatory training, consulting with psychiatrists for patient issues, and filing out items requested by attorneys for Brightside's clients (for example – items involving child custody, workers compensation, or stress leave).³² She also alleges numerous additional claims, including but not limited to failure to provide rest breaks, failure to reimburse business expenses, failure to provide accurate and itemized wage statements, and violations of Labor Code §§ 201-203.³³ Plaintiff Heitkamp's potential individual damages are substantial. Despite this, she dutifully prosecuted this litigation on behalf of the LWDA and members of the PAGA Group and gave a general release of her claims.

23. Plaintiff's requested enhancement is also supported by the factors cited in the Court's Order and contained in the *Cellphone Termination Fee Cases*.³⁴ Factor 1 is "the risk to

²⁷ Ex. 2 at p. 4 (PAGA letter).

²⁸ Supp. Heitkamp Decl. at ¶ 3.

²⁹ *Id.* It should be noted that she worked approximately 360 days total (90 weeks x 4 days a week=360 days).

³⁰ 20 minutes per day x 360 days worked= 7,200 minutes total. 7,200 minutes / 60 minutes an hour equals 120 hours.

³¹ 120 (hours spent reading and responding to emails) x \$70 (per hour) = \$8,400. Further, Plaintiff Heitkamp was paid based on a compensation schedule provided by Defendant, for example \$70 for an appointment with an existing patient. Supp. Heitkamp Decl. at ¶ 3.

³² Ex. 2 at p. 4-5 (PAGA letter).

³³ *Id.* at pp. 4-5.

³⁴ 186.Cal.App.4th 1380, 1394-95. *See also*, Court's Order at 3:2-9.

the class representative in commencing suit, both financial and otherwise.”³⁵ Here, Plaintiff Heitkamp faced the financial risk of being responsible for some of the costs incurred by Defendant if the lawsuit was unsuccessful.³⁶ She is also worried about her reputation in the community due to bringing this lawsuit, as well as possible repercussions to her future job opportunities because she has been the named plaintiff in this action against Defendant.³⁷ This factor weighs in her favor.

24. Factor 2 of the *Cellphone Termination Fee Cases* is “the notoriety and personal difficulties encountered by the class representative.”³⁸ Here, Plaintiff Heitkamp is the named plaintiff in this wage and hour lawsuit against Defendant. She has justifiable worries about her reputation in the community and losing potential job opportunities due to being the named plaintiff in this wage and hour lawsuit.³⁹ On September 16, 2026, I personally typed into Google “Janea Heitkamp lawsuit” and Google returned two results. Any potential employer can do the same search, which could lead to potential lost job opportunities. Fear of lost job opportunities is a legitimate fear of named plaintiffs in wage and hour suits.

25. Factor 3 of the *Cellphone Termination Fee Cases* is “the amount of time and effort spent by the class representative.”⁴⁰ Here, Plaintiff Heitkamp spent approximately 21 hours and 45 minutes prosecuting this litigation.⁴¹ This is time she could have spent on other endeavors, including performing therapy services for potential clients to earn money for herself and her family. Further, even if this case did not involve discovery, Plaintiff Heitkamp attended two PAGA early evaluation conferences with Judge Ferrall.⁴² This is in addition to the many additional tasks she describes in her declaration.⁴³

³⁵ *Id.* at 1394.

³⁶ Supp. Heitkamp Decl. at ¶ 14.

³⁷ *Id.* at ¶¶ 14-15, 17.

³⁸ 186.Cal.App.4th 1380, 1394.

³⁹ Supp. Heitkamp Decl. at ¶¶ 14-15, 17.

⁴⁰ 186.Cal.App.4th at 1394.

⁴¹ Supp. Heitkamp Decl. at ¶¶ 5-13.

⁴² Supp. Heitkamp Decl. at ¶¶ 9, 13.

⁴³ *Id.* at ¶¶ 4-13.

26. Factor 4 of the *Cellphone Termination Fee Cases* is “the duration of the litigation.” Plaintiff Heitkamp’s PAGA letter was filed on April 2, 2025, over one year and five months ago. Plaintiff filed her Complaint on June 9, 2025, over a year and three months ago. This action did not settle quickly and is still not over.

27. Factor 5 of the *Cellphone Termination Fee Cases* is “the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.”⁴⁴ Here, Plaintiff Heitkamp is not receiving a significant personal benefit. As noted above, she gave a general release of her claims and cannot pursue a separate damages action, which has the potential to exceed her requested enhancement by several thousand dollars.

28. Further, Plaintiff Heitkamp’s potential Individual Settlement Payment will not provide her with a significant personal benefit. In accordance with the Amended Settlement Agreement, members of the PAGA Group will receive Individual Settlement Payments based on their monthly pay periods worked and the “Pay Period Value.”⁴⁵ The “Pay Period Value” is calculated as followed:

The portion of the Net Settlement Amount to be distributed to the PAGA Group (*i.e.*, 35% of the Net Settlement Amount) shall be divided by the total number of full pay periods which the PAGA Group performed services for Defendant during the PAGA Release Period, with partial pay periods rounded up to the next whole number and as determined by Defendant’s records. This amount shall be known as the “Pay Period Value.”⁴⁶

The net settlement amount in this action is approximately \$118,234.43.⁴⁷ As required by Labor Code § 2699(m), 65% of the Net Settlement Amount will be paid to the LWDA and 35%

⁴⁴ 186.Cal.App.4th at 1394-95.

⁴⁵ Supp. Spencer Ex. 9 at § II.G.

⁴⁶ Supp. Spencer Decl. Ex. 9 at § II.G (Amended Settlement Agreement).

⁴⁷ Spencer Decl. at ¶ 20.

1 (\$41,382.05) will be paid to the PAGA Group (*i.e.*, the aggrieved employees).⁴⁸ Given that there
2 are 1,422 monthly pay periods in this action,⁴⁹ the Pay Period Value is \$29.11.⁵⁰

3 29. The PAGA Release Period is April 2, 2024 through January 7, 2026.⁵¹ Plaintiff
4 has approximately 10 monthly pay periods during the PAGA release period.⁵² Thus, Plaintiff
5 Heitkamp will receive approximately \$291.10 as her Individual Settlement Payment.⁵³ This is an
6 insignificant amount compared to the time she spent prosecuting this action.

7 30. The Court's Order notes that it will look at the average, minimum, and maximum
8 amounts that the aggrieved employees will be receiving when determining the appropriateness of
9 a service award.⁵⁴ On average, each PAGA Group Member will receive approximately \$297.71
10 (\$41,382.05/139 = \$297.71).⁵⁵ The approximate minimum Individual Settlement Payment is
11 \$29.10 for members of the PAGA Group that worked only one monthly pay period. The
12 approximate maximum Individual Settlement Payment is \$582.00 for individuals that have
13 approximately 20 monthly pay periods during the PAGA Release Period.

14 31. Additionally, the Court should not ignore the significant benefit received by the
15 LWDA in this action. Labor Code § 2699(m) requires 65% of the Net Settlement Value to go to
16 the LWDA for the enforcement of California's Labor laws. The LWDA will receive approximately
17 \$76,852.38. This significant benefit to the LWDA should be taken into account when considering
18 Plaintiff Heitkamp's enhancement payment.

19
20 ⁴⁸ *Id.*

21 ⁴⁹ Supp. Spencer Decl. Ex. 9 at § II.G (definition of Individual Settlement Payment).

22 ⁵⁰ Supp. Spencer Decl. Ex. 9 at § II.G (explaining the Individual Settlement Payment and
23 Calculations of "Pay Period Value"). \$41,382 (payment to PAGA Group) / 1,422 (monthly pay
24 periods) = \$29.11 per pay period.

25 ⁵¹ Ex. 9 at § II.L.

26 ⁵² Plaintiff Heitkamp stopped performing services for Defendant in January 2025. Heitkamp Supp.
27 Decl. at ¶ 3. Plaintiff Heitkamp therefore has approximately 10 monthly pay periods from the
28 beginning of the PAGA Release Period on April 2, 2024 through the end of her relationship with
29 Defendant in January 2025.

30 ⁵³ 10 (monthly pay periods worked by Ms. Heitkamp) x \$29.11 (Pay Period Value) = \$291.10.

31 ⁵⁴ Court's Order at 3:9-11.

32 ⁵⁵ The portion of the Net Settlement Amount to be paid to PAGA Group members is \$41,382.05.
33 Spencer Decl. at ¶ 20. There are approximately 139 members of the PAGA Group. Spencer Decl.
34 at ¶ 9. Thus the average payment is calculated as \$41,382.05/139 = \$297.71.

32. **Plaintiff's Counsel has not Delayed Prosecuting this Action:** The Court's Order states that the Court "will take into account the numerous delays in this case by plaintiff's counsel when determining attorneys' fees."⁵⁶ Plaintiff's Counsel has vigorously litigated this action and there have been no such delays caused by Plaintiff's Counsel.

33. This is demonstrated by my personal time records submitted to the Court. The PAGA early evaluation conference took place on January 7, 2026 with a follow-up session on January 13, 2026. My time records show that I drafted a proposed settlement agreement and provided it to Defendant ***on January 13, 2026, the very day the Parties agreed to settle this action.***⁵⁷

34. The Court then required that the Parties attend a case management conference on February 5, 2026 in order to receive guidance from the Court regarding settlement agreements as well as items to address in the approval papers. The Parties waited until receiving such guidance to edit the settlement agreement.

35. Before addressing the time frame of Opposing Counsel's response to my settlement draft, it should be noted that negotiating formal settlement agreements in independent contractor misclassification cases are very difficult. Defendants in such cases will have heightened concerns about the wording of the settlement agreement.

36. Plaintiff's Counsel did not receive any comments or edits from Defendant until the evening of March 22, 2026, a Sunday.⁵⁸ Defendant provided different draft of a settlement agreement as well as a draft of a PAGA approval motion. My time records show that I reviewed the draft of the settlement agreement and the motion the very next business day and addressed it

⁵⁶ Order at 2:24-25.

⁵⁷ Ex. 6 at p. 4, entry for January 13, 2026 (Robert Spencer, Esq.'s time records).

⁵⁸ If the Court is concerned of a lack of time entries between February 5, 2026 and March 18, 2026, the Court should be aware that I fell very ill in February 2026. I missed two weeks of work and went to the emergency room, then had to catch-up after I returned to work. I also did not record certain time entries for emails I sent to Defendant regarding the status of the settlement agreement as they would take less than a minute to draft and send.

1 with Defendant.⁵⁹ I did not believe Defendant's draft settlement agreement would be approved as
2 well as the fact that I will not utilize a motion that my firm does not draft.

3 37. Defendant then sent an updated draft of a settlement agreement the afternoon of May
4 6, 2026, a Wednesday. I was responded to Defendant the following Monday, May 11, 2026, which
5 is within three business days.⁶⁰ My time records also show that I that I was in contact with
6 Defendant throughout April 2026 regarding the status of the settlement, and participated in case
7 management conferences with Judge Ferrall regarding the status of the settlement.⁶¹ The Parties
8 were then able to finalize and execute the formal settlement agreement in June 2026 and Plaintiff's
9 Counsel filed for PAGA approval on July 17, 2026.

10 38. It is not the fault of Plaintiff's Counsel that the Parties requested a continuance of
11 Plaintiff's deadline to file her motion for PAGA approval. Plaintiff Counsel diligently pursued a
12 settlement of this action and cannot file for approval until the formal settlement agreement was
13 executed. As my time records demonstrate, Plaintiff's Counsel did not delay the prosecution of
14 this action.

15 39. Plaintiff's Counsel also did not delay in prosecuting this action prior to the PAGA
16 early evaluation conference. Plaintiff filed her complaint on June 9, 2025 and the proof of service
17 of summons was filed on June 27, 2025. Plaintiff's Counsel began the process of drafting
18 discovery on July 1, 2025, which continued through early July 2025 with internal edits and
19 review.⁶²

20 40. On July 23, 2025, Defendant filed a request for a PAGA early evaluation conference
21 as well as a stay pursuant to Labor Code § 2699.3(f)(1)(A). Plaintiff therefore held off on
22 propounding discovery due to the imminent stay. If I had propounded discovery when a stay was
23 imminent, Defendant would likely have viewed it as an antagonistic act, particularly as a PAGA
24 early evaluation conference is intended to save costs. Further, Defendant would likely have
25 responded with objections based on the imminent stay.

26 ⁵⁹ Ex. 6 at p. 5, entry for March 23, 2026 (Robert Spencer, Esq.'s time records).

27 ⁶⁰ *Id.*

28 ⁶¹ *Id.*

⁶² *Id.* at time entries for July 2025.

1 41. In its order filed October 3, 2025, the Court set the PAGA early evaluation
2 conference for December 2, 2025 with Judge Ferrall. Due to Defendant having a scheduling
3 conflict, the Court granted a minor continuance of eight days to December 10, 2025.

4 42. The conference was then moved at the request of Judge Ferrall. After receiving
5 Judge Ferrall's request, the Parties provided dates for January 2026. This avoided the holidays and
6 provided additional time for Defendant to provide certain data, which was required to perform a
7 damage calculation and have a successful conference. Judge Ferrall then moved the PAGA early
8 evaluation conference to January 7, 2026.

9 43. As such, Plaintiff's Counsel is not responsible for any delays in the scheduling of
10 the PAGA early evaluation conference. The continuances were due to the needs of the Court as
11 well as Defendant's request for a minor continuance of eight days.

12 44. **Proof of Service on the LWDA:** On September 24, 2026, I personally uploaded the
13 following documents on the LWDA: 1) Amended Labor Code Private Attorneys Act Settlement
14 Agreement, 2) Supplemental Declaration of Alex P. Katofsky in Support of Motion for Court
15 Approval of the Parties' PAGA Settlement, 3) Supplemental Declaration of Janae Heitkamp in
16 Support of Motion for Court Approval of the Parties' PAGA Settlement, 4) Declaration of Michael
17 Moore in Support of Motion for Court Approval of the Parties' PAGA Settlement, and 5) this
18 declaration.

19 I declare under penalty of perjury under the laws of the State of California and the United
20 States that the foregoing is true and correct, and that this Declaration was executed on this 24th
21 day of September 2026 at San Francisco, California.

22
23 
24 ROBERT SPENCER

EXHIBIT 9

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REPRESENTATIVE ACTION

AMENDED LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT

Complaint Filed: June 9, 2025
Dept: 613

This Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement (“Settlement Agreement”) is made by and between JENAE HEITKAMP (“Plaintiff”), on her own behalf and on behalf of all members of the PAGA Group (as defined below) and the State of California, on the one hand, and BRIGHTSIDE HEALTH, INC. (“Defendant”) on the other hand (collectively the “Parties”), in the lawsuit entitled *Heitkamp v. Brightside Health, Inc.* filed in San Francisco Superior Court, Case No. CGC-25-626072. This Settlement Agreement resolves all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged violations of the Labor Code, including all claims that were or could have been alleged in the LWDA Notice based on the facts and theories expressly stated therein, and the Labor Code sections identified therein.

I. RECITALS

WHEREAS, Plaintiff submitted a notice to the California Labor and Workforce Development Agency (“LWDA”) dated April 2, 2025 (the “LWDA Notice”), alleging violations of the California Labor Code arising out of the alleged misclassification of certain “independent contractor therapists”;

WHEREAS, on June 9, 2025, Plaintiff filed the action entitled *Jenae Heitkamp v. Brightside Health, Inc.*, Case No. CGC-25-626072, pending in the Superior Court of California, County of San Francisco (the “Litigation”), asserting representative claims under PAGA (“the Operative Complaint”);

WHEREAS, Defendant denies all allegations of wrongdoing, denies that any worker was misclassified, denies that any Labor Code violation occurred, and denies that any civil penalties are owed;

WHEREAS, the Parties participated in two Early Evaluation Conferences before the Honorable Brian L. Ferrall, exchanged information sufficient to evaluate the strengths and weaknesses of the claims and defenses, and thereafter engaged in meaningful, arm’s-length settlement negotiations;

WHEREAS, the Parties recognize that classification issues can involve fact-intensive and individualized inquiries, and that continued litigation would require substantial additional time, expense, and use of judicial and agency resources;

WHEREAS, Defendant represents that it takes compliance obligations seriously and has evaluated the policies and practices implicated by the allegations in the Action, without admitting that any change was or is legally required;

WHEREAS, the Parties desire to resolve the representative PAGA claims asserted in the Action in a manner they believe is fair, adequate, and reasonable, while avoiding the uncertainty, burden, and expense of further litigation;

WHEREAS, the Parties further intend that this Agreement resolve only the case-specific representative PAGA dispute presented in the Action and not be used as a benchmark, valuation model, admission, or precedent in any other matter;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree as follows:

II. DEFINITIONS

A. ADMINISTRATIVE COSTS. The term “Administrative Costs” as used herein means all administrative costs of settlement, including cost of notice to the PAGA Group, administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement Agreement.

B. AGREEMENT OR SETTLEMENT AGREEMENT. The terms “Agreement” or “Settlement Agreement” are used synonymously herein to mean this Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement.

C. COURT. The term “Court” as used herein means the Superior Court of the State of California for the County of San Francisco.

D. DEFENDANT. The term “Defendant” as used herein means Brightside Health, Inc.

E. DEFENDANT’S COUNSEL. The term “Defendant’s Counsel” as used herein means McDermott Will & Schulte LLP.

F. EFFECTIVE DATE. This Agreement shall become effective when all of the

following events have occurred (“Effective Date”): (i) the Settlement Agreement has been executed by Plaintiff, Defendant, Plaintiff’s Counsel, and Defendant’s Counsel; (ii) Notice of the Settlement has been sent to the LWDA; (iii) the Court has given approval to the Settlement; (iv) the Court has entered the Court’s Final Order and Judgment; and (v) the later of the following events: (a) when the period for filing any appeal, writ, or other appellate proceeding opposing approval of the settlement and judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) when any appeal, writ or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ or other appellate proceeding has upheld the Court’s Final Order and Judgment with no right to pursue further remedies or relief. If the Court declines to approve the Settlement, the Parties will work in good faith to address the Court’s concerns. If, after the Parties have exhausted all good faith efforts to obtain approval of the Settlement Agreement, the Court declines to approve the settlement, the entire Settlement Agreement is deemed void and unenforceable as if no settlement of any claim was ever reached.

G. INDIVIDUAL SETTLEMENT PAYMENT. The term “Individual Settlement Payment” as used herein means the pro rata payment that each member of the PAGA Group will receive as his or her share of the Net Settlement Amount. The portion of the Net Settlement Amount to be distributed to the PAGA Group (*i.e.*, 35% of the Net Settlement Amount) shall be divided by the total number of full pay periods which the PAGA Group performed services for Defendant during the PAGA Release Period, with partial pay periods rounded up to the next whole number and as determined by Defendant’s records. This amount shall be known as the “Pay Period Value.” Each member of the PAGA Group shall be paid an amount equal to the number of individual pay periods he or she performed services for Defendant during the PAGA Release Period multiplied by the Pay Period Value. Defendant represents that, based on a reasonable investigation of its records, the total number of full pay periods for services performed by individuals in the PAGA Group, including Plaintiff, does not exceed 1,422 monthly pay periods.

H. LITIGATION. The term “Litigation” as used herein means the action entitled *Heitkamp v. Brightside Health, Inc.*, filed in San Francisco County Superior Court, Case No.

CGC-25-626072.

I. LWDA PAYMENT. The term “LWDA Payment” as used herein means the sixty-five percent (65%) of the Net Settlement Amount payable to the California Labor and Workforce Development Agency (“LWDA”).

J. NET SETTLEMENT AMOUNT. The term “Net Settlement Amount” as used herein means the Settlement Amount minus any award of attorneys’ fees and litigation costs to Plaintiff’s Counsel, Administrative Costs, and Plaintiff’s enhancement award. Pursuant to the statutory requirements of PAGA, sixty-five percent (65%) of the Net Settlement Amount will be paid to the LWDA and thirty-five percent (35%) of the Net Settlement Amount will be paid to the PAGA Group based on the distribution formula set forth in this Agreement.

K. PAGA GROUP. The PAGA Group means all persons engaged by Defendant in California and classified as an independent contractor remote therapist who performed services for Defendant during the PAGA Release Period. Defendant represents that, based on a reasonable investigation of its records, the total number of individuals in the PAGA Group, including Plaintiff, does not exceed 139.

L. PAGA RELEASE PERIOD. Except as provided herein, the term “PAGA Release Period” shall refer to the period from and including April 2, 2024 through January 7, 2026, inclusive.

M. PLAINTIFF. The term “Plaintiff” as used herein means Jenae Heitkamp.

N. PLAINTIFF’S COUNSEL. The term “Plaintiff’s Counsel” as used herein means Keller Grover LLP and Law Offices of Alex P. Katofsky, A Professional Company.

O. SETTLEMENT ADMINISTRATOR. The term “Settlement Administrator” as used herein means **Phoenix Settlement Administrators**, which will be responsible for the administration of the settlement embodied in this Agreement and all related matters.

P. SETTLEMENT AMOUNT. Except as provided herein, the term “Settlement Amount” means a fund in the all-inclusive sum of \$195,000 which shall be paid by Defendant. The Settlement Amount shall cover, resolve, and fully satisfy the Administrative Costs and all amounts owed to Plaintiff, the PAGA Group, the LWDA, and Plaintiff’s Counsel, including all

1 amounts allocated to attorneys' fees and litigation costs.

2 **III. BACKGROUND**

3 **A.** On June 9, 2025, Plaintiff filed her Complaint in San Francisco Superior Court
4 against Defendant for penalties pursuant to Labor Code § 2699(f) for alleged violations and
5 penalties under Labor Code §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 226.8, 423.5, 510,
6 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802. Counsel for the Parties met and conferred
7 with respect to the potential settlement of the Litigation and Defendant requested an early
8 evaluation conference pursuant to Labor Code § 2699.3(f). Pursuant to these discussions, the
9 Parties agreed to exchange additional informal discovery prior to the early evaluation conference.
10 The Parties subsequently exchanged additional informal discovery, including information and
11 documentation concerning the claims set forth in the Litigation and information regarding the
12 number of PAGA Group members and the total pay periods for which services were performed
13 by the PAGA Group during the PAGA Release Period.

14 **B.** Plaintiff, Defendant, and their respective counsel have engaged in good faith,
15 arms-length negotiations. On January 7, 2026 the Parties participated in an early evaluation
16 conference with the Honorable Brian L. Ferrall, as well as a follow-up session on January 13,
17 2026. This resulted in reaching a resolution of this matter. The Parties have now entered into a
18 more detailed, formalized Settlement Agreement for submission to the Court for approval.

19 **C.** Plaintiff's counsel has conducted an investigation of the law and facts relating to
20 the claims asserted in the Litigation and has concluded, taking into account the sharply contested
21 issues involved, the expense and time necessary to pursue the Litigation through trial and any
22 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
23 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the
24 Plaintiff, the State of California, and the members of the PAGA Group pursuant to this
25 Agreement, and that a settlement with Defendant on the terms and conditions set forth herein is
26 fair, reasonable, adequate, and in the best interests of the State of California and the PAGA
27 Group. Plaintiff, on her own behalf and as a representative pursuant to PAGA, has agreed to settle
28 the Litigation with Defendant on the terms set forth herein.

D. Defendant has concluded that, because of the substantial expense of defending against the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, it is in its best interests to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted against it in the Litigation. However, Defendant nevertheless desires to settle the Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies engendered by the Litigation.

E. This Agreement is intended to and does effectuate the full, final, and complete resolution of all allegations and claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged violations of the Labor Code on behalf of the PAGA Group, including all claims that were and/or could have been alleged based on the factual allegations and identified Labor Code sections in the in the LWDA Letter.

IV. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendant denies in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted approval of this Agreement, pursuant to California Code of Civil Procedure § 664.6 the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Agreement consistent with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this Agreement and all orders and judgments entered in connection therewith.

V. STATEMENT OF NO ADMISSION

A. Defendant denies liability to Plaintiff and to the PAGA Group upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the LWDA Letter and/or the Litigation.

B. Nothing in this Agreement, nor any action taken in implementation thereof, nor

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any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case or 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. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported 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, or for any other purpose. This includes, without limitation, use in any other representative action, class action, PAGA action, arbitration, administrative proceeding, or agency proceeding against Defendant or any Released Party. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement, or any orders or judgments of the Court entered in connection with the settlement.

C. None of the documents produced or created by Plaintiff or her counsel in connection with the approval of this settlement or administration of this settlement constitute, and are not intended to constitute, an admission by Defendant 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.

D. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any group should or would be given collective or representative treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions regarding this Agreement will be admissible in any court or other tribunal regarding the propriety of collective or representative treatment. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights, or

remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation. Nothing in this Agreement shall be construed as an admission that Plaintiff or any member of the PAGA Group was an employee of Defendant at any time.

VI. RELEASE

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and Plaintiff's Counsel will release claims against all Released Parties as follows:

A. PLAINTIFF'S RELEASE.

Plaintiff and Plaintiff's respective former and present representatives, agents, attorneys (including Plaintiff's Counsel), administrators, successors and assigns generally, release and discharge Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties") from all claims, transactions or occurrences [that occurred during the PAGA Release Period], including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at anytime or based on occurrences outside the PAGA Release Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

B. PLAINTIFF'S WAIVER OF RIGHTS UNDER CIVIL CODE SECTION 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if

known by him or her would have materially affected his or her settlement with the debtor or released party.

C. RELEASE BY PAGA GROUP.

All members of the PAGA Group are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Release Period and the PAGA Notice.

VII. SETTLEMENT ADMINISTRATOR

Plaintiff and Defendant, through their respective counsel, have selected Phoenix Settlement Administrators as the Settlement Administrator to administer the settlement, which includes but is not limited to distributing and responding to inquiries about the Notice of Settlement and calculating all amounts to be paid from the Settlement Amount, including the Individual Settlement Payments. The Administrative Costs are estimated to be no more than \$4,000.00 and will be paid from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the allocated \$4,000.00 will come from the Settlement Amount and will be subject to approval by the Court. If the actual Administrative Costs are less than the Parties' estimation, the difference between the actual and estimated Administrative Costs will be included in the Net Settlement Amount.

VIII. NOTICE

Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice of Settlement (the "Notice"), in the form attached hereto as **Exhibit "A"** which in substance will be provided to the members of the PAGA Group as follows:

As soon as practicable following approval of the settlement, but no later than 21 calendar days after the Effective Date, Defendant will provide to the Settlement Administrator the following information about each PAGA Group member: (1) name; (2) last known home address; (3) number of pay periods as a PAGA Group member during the PAGA Release Period; and (4) social security number (collectively referred to as the "PAGA List"). To protect the PAGA

Group's rights to privacy, the Administrator must maintain the PAGA List in confidence, use the PAGA List only for purposes of this Settlement and for no other purpose, and restrict access to the PAGA List to Administrator employees who need access to the PAGA List to effect and perform under this Agreement.

The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database, which provides updated addresses for any individual who has moved in the previous four years and who has notified the U.S. Postal Service of a forwarding address, to obtain current address information. Within 28 calendar days after the Settlement Administrator's receipt of the Settlement Amount, the Settlement Administrator will mail the Notice together with the Individual Settlement Payments to all PAGA Group members by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator. If a check 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 search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, after the check void date, the monies represented by the check shall be remitted to California's unclaimed property fund in the name of the applicable PAGA Group member.

IX. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. DISTRIBUTION

The portion of the Net Settlement Amount to be distributed to the PAGA Group (*i.e.*, 35% of the Net Settlement Amount) shall be divided by the total number of full pay periods which the PAGA Group performed services for Defendant during the PAGA Release Period, with partial pay periods rounded up to the next whole number and as determined by Defendant's records. This amount shall be known as the "Pay Period Value." Each member of the PAGA Group shall be paid an amount equal to the number of individual pay periods he or she performed services for Defendant during the PAGA Release Period multiplied by the Pay Period Value.

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The portion of the Net Settlement amount to be distributed to the LWDA (*i.e.*, 65% of the Net Settlement Amount) shall be paid by the Administrator from the Gross Settlement Amount to the LWDA within 28 calendar days after the Settlement Administrator's receipt of the Settlement Amount.

B. FUNDING OF THE SETTLEMENT AMOUNT.

The funding of the Settlement Amount by Defendant will be completed at one time with funds provided to and escrowed by the Settlement Administrator. The Settlement Amount shall be deposited with the Settlement Administrator by Defendant within 10 calendar days of the date of the Effective Date.

If a PAGA Group member is deceased at the time of distribution, the Settlement Administrator shall distribute the deceased PAGA Group member's Individual Settlement Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA Group member's estate and attempt to place the deceased PAGA Group member's payment in escrow or similar disposition such that any competing heirs may take whatever action they wish to resolve ultimate disposition of such money and the Settlement Administrator and the Parties hereto may disclaim any further interest in or obligation in relation to such money.

Settlement checks will specifically indicate that they are void if not negotiated within 180 days of their issuance. Any settlement checks that remain uncashed 180 or more calendar days after issuance by the Settlement Administrator shall be voided and the Settlement Administrator will remit the entire amount of each PAGA Group member's uncashed Individual Settlement Payment to California's unclaimed property fund in the name of the applicable PAGA Group member.

The Administrator shall promptly send a replacement check to any member of the PAGA Group whose original check was lost or misplaced and which is requested by the PAGA Group member prior to the void date.

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C. TIME FOR DISTRIBUTION OF THE ENHANCEMENTS TO PLAINTIFF, ATTORNEYS' FEES AND LITIGATION COSTS TO PLAINTIFF'S COUNSEL, THE LWDA PAYMENT AND ADMINISTRATIVE COSTS.

The Settlement Administrator shall cause the Court approved enhancement to Plaintiff, attorneys' fees and litigation costs awarded to Plaintiff's Counsel, and the LWDA Payment to be paid within 28 days of the funding of the Settlement Amount. The Settlement Administrator may pay itself the Court-approved administrative costs once the Individual Settlement Payments have been mailed out.

X. RENEGOTIATION IF CONCERNS ARE RAISED

A. This Agreement contains no escalator clause and no automatic increase in the Gross Settlement Amount shall occur based on any inquiry, objection, or concern raised by the Court or the LWDA.

B. If the Court or the LWDA expresses concern regarding any Material Term of this Agreement, the Parties shall meet and confer in good faith to determine whether mutually acceptable revisions can be made.

C. Before requesting any contested ruling on a matter involving a Material Term, the Parties agree to seek further guidance from the Honorable Brian L. Ferrall, if available, in light of that judicial officer's prior involvement in the Parties' Early Evaluation Conferences, or from such other judicial officer as the Court may designate.

D. Neither Party shall be required to agree to any modification that materially alters the consideration or risk allocation reflected in this Agreement.

E. If the Parties are unable to agree to mutually acceptable revisions after good-faith efforts, either Party may withdraw from this Agreement, in which event the Agreement shall become null and void.

F. All negotiations and discussions undertaken pursuant to this section are compromise negotiations and shall be treated in accordance with California Evidence Code section 1152.

1 **XI. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

2 The amounts paid under this Agreement do not represent a modification of any previously
3 credited hours of service under any employee benefit plan, policy, or bonus program sponsored
4 by Defendant. Such amounts will not form the basis for additional contributions to, benefits
5 under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by
6 Defendant, policies or bonus programs. Any payments made under the terms of this Agreement
7 shall not be applied retroactively, currently, or on a going forward basis as salary, earnings,
8 wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or
9 bonus program. Defendant retains the right to modify the language of its benefit plans, policies,
10 and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
11 Agreement are not for "hours worked," "hours paid," "hours of service," or any similar
12 measuring term as defined by applicable plans, policies, and bonus programs for purpose of
13 eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
14 benefits are not required by this Agreement.

15 **XII. PLAINTIFF'S COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

16 Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's
17 Counsel shall not seek or receive an amount more than one-third of the Settlement Amount, for
18 all past and future attorneys' fees necessary to prosecute, settle, and administer the Litigation and
19 this Agreement. Additionally, Defendant shall not oppose an application by Plaintiff's Counsel
20 for reimbursement of all past and future litigation costs and expenses necessary to prosecute,
21 settle, and administer the Litigation and this Agreement, which Plaintiff's Counsel estimates will
22 not exceed \$5,000. Any attorneys' fees or litigation costs awarded to Plaintiff's Counsel by the
23 Court shall be deducted from the Settlement Amount for the purpose of determining the Net
24 Settlement Amount, and the Administrator shall pay Plaintiff's Counsel fees and expenses and
25 report the payments on one or more IRS 1099 forms. This amount shall include all attorneys'
26 fees, litigation costs, and expenses for which Plaintiff and Plaintiff's Counsel could claim in this
27 Litigation under any legal theory whatsoever. Released Parties shall have no liability to
28 Plaintiff's Counsel or any other Plaintiff's counsel arising from any claim to any portion of any

fee and/or litigation costs award. Should the Court approve a lesser percentage or amount of fees and/or litigation costs than the amount that Plaintiff's Counsel seeks, then the unapproved portion or portions shall revert to the Net Settlement Amount. The award of fees and/or litigation costs to Plaintiff's Counsel is not a material term of this Agreement and does not give rise to a basis to abrogate this Agreement.

XIII. ENHANCEMENT TO PLAINTIFF

Defendant shall not oppose an application by Plaintiff to seek or receive an amount not to exceed \$5,000 for her participation in and assistance with the Litigation. Any enhancement awarded to Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099-misc. If the Court approves an enhancement of less than \$5,000 then the unapproved portion shall revert into the Net Settlement Amount. The award of an enhancement payment to Plaintiff is not a material term of this Agreement and does not give rise to a basis to abrogate this Agreement.

XIV. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"): 100% as penalties. The Parties agree that all payments under this Agreement are penalties and not wages, compensation for services, or remuneration for employment, and no portion shall be treated as wages for any purpose.

PAGA Group members may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

XV. COURT APPROVAL

Plaintiff's Counsel will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code § 2699 (f)(2) including (i) a draft proposed Order Granting Approval of PAGA Settlement; and (ii) a signed declaration from Plaintiff's Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3 (a)), operative Complaint (Labor Code § 2699 (l)(1)), this Agreement (Labor Code § 2699 (l)(2))).

This Agreement is contingent upon approval by the Court. Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure approval of this Agreement, to the extent not inconsistent with the terms of this Agreement.

XVI. APPRAISAL AND CERTIFICATION BY THE SETTLEMENT

ADMINISTRATOR

The Settlement Administrator shall keep Plaintiff's Counsel and Defendant's Counsel apprised of all distributions from the Settlement Amount. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to Plaintiff's Counsel and Defendant's Counsel. The Settlement Administrator shall provide a final accounting, including the names of payees and the amounts of the Individual Settlement Payments.

XVII. MISCELLANEOUS PROVISIONS

A. STAY OF LITIGATION.

Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending approval of this Agreement by the Court.

B. INTERPRETATION OF THE AGREEMENT.

This Agreement constitutes the entire agreement between Plaintiff and Defendant. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. This Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of law's provisions. Any claim arising out of or relating to this Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of San Francisco, and Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. Plaintiff, on her own behalf and on behalf of the PAGA Group and the State of California, and Defendant participated

in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Plaintiff and Defendant with respect to the resolution of the Litigation. This Agreement may be modified only by a writing signed by counsel for all Parties or their successors-in-interest.

C. FURTHER COOPERATION.

Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek approval of this Agreement from the Court, and to do all things reasonably necessary or convenient to consummate this Agreement as expeditiously as possible.

D. COUNTERPARTS.

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

E. AUTHORITY.

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

F. NO THIRD-PARTY BENEFICIARIES.

Plaintiff, members of the PAGA Group, the State of California, Defendant and Released Parties are direct beneficiaries of this Agreement. The Parties are not aware of any third-party beneficiaries.

G. DEADLINES FALLING ON WEEKENDS OR HOLIDAYS.

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

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H. SEVERABILITY.

If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision.

I. DEFENDANT’S FEES AND COSTS

All of Defendant’s own legal fees, costs and expenses incurred in this Litigation shall be borne by Defendant.

J. WAIVER OF RIGHT TO APPEAL

Provided the Court’s judgment is consistent with the terms and conditions of this Agreement, the Parties and their respective counsel waive all rights to appeal from the judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the judgment becomes final.

K. REPRESENTATION OF PROCEDURAL CHANGES

Defendant expressly denies any wrongdoing, liability, misclassification, or violation of the Labor Code. Without admitting liability or conceding that any modification was legally required, Defendant represents that it has reviewed the policies and practices implicated by the allegations in the Action and, where Defendant deemed appropriate, has evaluated or implemented measures intended to align its practices with Defendant’s understanding of applicable California law. Nothing in this Agreement shall be construed as an admission that Defendant previously acted unlawfully, that any specific remedial measure was required, or that any particular policy or practice was deficient.

[Signatures on next page]

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APPROVED AS TO CONTENT:

9/21/2026

DATED: September __, 2026



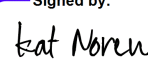
JENAE HEITKAMP

DATED: September ^{9/24/2026 | 4:57:02 PM PDT} __, 2026

BRIGHTSIDE HEALTH, INC.

Signed by:

By:



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APPROVED AS TO FORM:

DATED: September 22, 2026

KELLER GROVER LLP

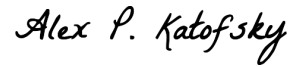
By:



ERIC A. GROVER
ROBERT W. SPENCER
Attorney for Plaintiff

DATED: September 22, 2026

**LAW OFFICES OF ALEX P. KATOFSKY,
A PROFESSIONAL CORPORATION**



By:

ALEX P. KATOFSKY
Attorney for Plaintiff

9/24/2026 | 7:03:06 PM CDT

DATED: September __, 2026

MCDERMOTT WILL & SCHULTE LLP

Signed by:

By:



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MARIA C. RODRIGUEZ
ELVIRA R. KRAS
MEGAN A. LEE
Attorneys for Defendant

EXHIBIT A

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

JENAE HEITKAMP, on behalf of herself,
and all aggrieved employees,

Plaintiff,

v.

BRIGHTSIDE HEALTH, INC., and
DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-25-626072

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS
(CAL. LABOR CODE §§ 2698, ET SEQ.)**

You have been identified as a member of the PAGA Group in the above referenced matter. The PAGA Group means all persons engaged by Defendant in California and classified as an independent contractor remote therapist who performed services for Defendant during the PAGA Release Period.

On June 9, 2025, a complaint was filed in San Francisco County Superior Court (the “Court”) to recover civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* (“PAGA”). The lawsuit alleges that PAGA Group members were misclassified as independent contractors and not paid for all hours worked, were not provided proper rest breaks, were not provided with accurate itemized wage statements, were not paid all wages due at the time of discharge or voluntary quit, were not paid in a timely manner, were not reimbursed for business expenses, were willfully misclassified as independent contractors, and were required to agree to unlawful terms and conditions.

Brightside denies all of Plaintiff’s allegations and disputes all of Plaintiff’s claims, and contends that it complied with all applicable laws. The Court has made no determination whether Plaintiff or Brightside is correct on the merits and, by agreeing to settle, Brightside does not admit any violations or concede the merits of any claim.

Plaintiffs and Defendant reached a settlement of the claims for PAGA civil penalties alleged in the lawsuit. The Court approved the settlement on _____. By law, 65% of the civil penalties are paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) for the enforcement of the state’s labor laws and 35% are paid to the PAGA Group.

Pursuant to the settlement agreement, the amount to be distributed to the PAGA Group shall be divided by the total number of pay periods, with partial pay periods rounded up to the next whole number, as determined by Defendant’s records, worked by all PAGA Group members between April 2, 2024 through January 7, 2026, inclusive. This amount shall be known as the “Pay Period Value.” Each member of the PAGA Group shall be paid an amount equal to the number of individual pay periods he or she worked for Defendant between April 2, 2024 through January 7, 2026, inclusive. Your Individual Settlement Payment is provided with this Notice, and will remain

negotiable for 180 days. If you do not cash, deposit, or negotiate your Individual Settlement Payment within 180 days, the check will be canceled and the funds will be sent to California's unclaimed property fund in your name.

The Court-approved settlement contains the following release of claims:

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

RELEASE BY PAGA GROUP.

All members of the PAGA Group are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Release Period and the PAGA Notice.

The Released Parties are defined as Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof.

This release of claims does not cover any other claims you may have against Defendant.

If you have any questions or would like a copy of the settlement agreement approved by the Court, please contact the Settlement Administrator at _____.

EXHIBIT 10

ERIC A. GROVER (SBN 136080)
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Attorneys for Defendant
BRIGHTSIDE HEALTH, INC.

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

JENAE HEITKAMP, on behalf of herself, and
all aggrieved employees,

Plaintiff,

v.

BRIGHTSIDE HEALTH, INC., and DOES 1
through 50, inclusive,

Defendants.

Case No: CGC-25-626072

*Assigned to the Honorable
Jeffrey S. Ross, Dept. 613*

REPRESENTATIVE ACTION

**AMENDED LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT**

Complaint Filed: June 9, 2025
Dept: 613

This Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement (“Settlement Agreement”) is made by and between JENAE HEITKAMP (“Plaintiff”), on her own behalf and on behalf of all members of the PAGA Group (as defined below) and the State of California, on the one hand, and BRIGHTSIDE HEALTH, INC. (“Defendant”) on the other hand (collectively the “Parties”), in the lawsuit entitled *Heitkamp v. Brightside Health, Inc.* filed in San Francisco Superior Court, Case No. CGC-25-626072. This Settlement Agreement resolves all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged violations of the Labor Code, including all claims that were or could have been alleged in the LWDA Notice based on the facts and theories expressly stated therein, and the Labor Code sections identified therein.

I. RECITALS

WHEREAS, Plaintiff submitted a notice to the California Labor and Workforce Development Agency (“LWDA”) dated April 2, 2025 (the “LWDA Notice”), alleging violations of the California Labor Code arising out of the alleged misclassification of certain “independent contractor therapists”;

WHEREAS, ~~after expiration of the applicable statutory notice period~~ on June 9, 2025, Plaintiff filed the action entitled *Jenae Heitkamp v. Brightside Health, Inc.*, Case No. CGC-25-626072, pending in the Superior Court of California, County of San Francisco (the “Litigation”), asserting representative claims under PAGA (“the Operative Complaint”);

WHEREAS, Defendant denies all allegations of wrongdoing, denies that any worker was misclassified, denies that any Labor Code violation occurred, and denies that any civil penalties are owed;

WHEREAS, the Parties participated in two Early Evaluation Conferences before the Honorable Brian L. Ferrall, exchanged information sufficient to evaluate the strengths and weaknesses of the claims and defenses, and thereafter engaged in meaningful, arm’s-length settlement negotiations;

WHEREAS, the Parties recognize that classification issues can involve fact-intensive and individualized inquiries, and that continued litigation would require substantial additional time, expense, and use of judicial and agency resources;

WHEREAS, Defendant represents that it takes compliance obligations seriously and has evaluated the policies and practices implicated by the allegations in the Action, without admitting that any change was or is legally required;

WHEREAS, the Parties desire to resolve the representative PAGA claims asserted in the Action in a manner they believe is fair, adequate, and reasonable, while avoiding the uncertainty, burden, and expense of further litigation;

WHEREAS, the Parties further intend that this Agreement resolve only the case-specific representative PAGA dispute presented in the Action and not be used as a benchmark, valuation model, admission, or precedent in any other matter;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree as follows:

II. DEFINITIONS

A. ADMINISTRATIVE COSTS. The term “Administrative Costs” as used herein means all administrative costs of settlement, including cost of notice to the PAGA Group, administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement Agreement.

B. AGREEMENT OR SETTLEMENT AGREEMENT. The terms “Agreement” or “Settlement Agreement” are used synonymously herein to mean this Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement.

C. COURT. The term “Court” as used herein means the Superior Court of the State of California for the County of San Francisco.

D. DEFENDANT. The term “Defendant” as used herein means Brightside Health, Inc.

E. DEFENDANT’S COUNSEL. The term “Defendant’s Counsel” as used herein means McDermott Will & Schulte LLP.

F. EFFECTIVE DATE. This Agreement shall become effective when all of the

1 following events have occurred (“Effective Date”): (i) the Settlement Agreement has been
2 executed by Plaintiff, Defendant, Plaintiff’s Counsel, and Defendant’s Counsel; (ii) Notice of the
3 Settlement has been sent to the LWDA; (iii) the Court has given approval to the Settlement; (iv)
4 the Court has entered the Court’s Final Order and Judgment; and (v) the later of the following
5 events: (a) when the period for filing any appeal, writ, or other appellate proceeding opposing
6 approval of the settlement and judgment has elapsed without any appeal, writ, or other appellate
7 proceeding having been filed; (b) when any appeal, writ or other appellate proceeding opposing
8 the settlement has been dismissed finally and conclusively with no right to pursue further
9 remedies or relief; or (c) when any appeal, writ or other appellate proceeding has upheld the
10 Court’s Final Order and Judgment with no right to pursue further remedies or relief. If the Court
11 declines to approve the Settlement, the Parties will work in good faith to address the Court’s
12 concerns. If, after the Parties have exhausted all good faith efforts to obtain approval of the
13 Settlement Agreement, the Court declines to approve the settlement, the entire Settlement
14 Agreement is deemed void and unenforceable as if no settlement of any claim was ever reached.

15 **G. INDIVIDUAL SETTLEMENT PAYMENT.** The term “Individual Settlement Payment”
16 as used herein means the pro rata payment that each member of the PAGA Group will receive as
17 his or her share of the Net Settlement Amount. The portion of the Net Settlement Amount to be
18 distributed to the PAGA Group (*i.e.*, 35% of the Net Settlement Amount) shall be divided by the
19 total number of full pay periods which the PAGA Group performed services for Defendant during
20 the PAGA Release Period, with partial pay periods rounded up to the next whole number and as
21 determined by Defendant’s records. This amount shall be known as the “Pay Period Value.” Each
22 member of the PAGA Group shall be paid an amount equal to the number of individual pay
23 periods he or she performed services for Defendant during the PAGA Release Period multiplied
24 by the Pay Period Value. Defendant represents that, based on a reasonable investigation of its
25 records, the total number of full pay periods for services performed by individuals in the PAGA
26 Group, including Plaintiff, does not exceed 1,422 monthly pay periods.

27 **H. LITIGATION.** The term “Litigation” as used herein means the action entitled
28 *Heitkamp v. Brightside Health, Inc.*, filed in San Francisco County Superior Court, Case No.

CGC-25-626072.

I. LWDA PAYMENT. The term “LWDA Payment” as used herein means the sixty-five percent (65%) of the Net Settlement Amount payable to the California Labor and Workforce Development Agency (“LWDA”).

J. NET SETTLEMENT AMOUNT. The term “Net Settlement Amount” as used herein means the Settlement Amount minus any award of attorneys’ fees and litigation costs to Plaintiff’s Counsel, Administrative Costs, and Plaintiff’s enhancement award. Pursuant to the statutory requirements of PAGA, sixty-five percent (65%) of the Net Settlement Amount will be paid to the LWDA and thirty-five percent (35%) of the Net Settlement Amount will be paid to the PAGA Group based on the distribution formula set forth in this Agreement.

K. PAGA GROUP. The PAGA Group ~~as used herein means all individuals who were engaged as independent contractors by Defendant in California during the PAGA Period and who fall within the scope of the violations alleged in the LWDA Notice.~~ means all persons engaged by Defendant in California and classified as an independent contractor remote therapist who performed services for Defendant during the PAGA Release Period. Defendant represents that, based on a reasonable investigation of its records, the total number of individuals in the PAGA Group, including Plaintiff, does not exceed 139.

L. PAGA RELEASE PERIOD. Except as provided herein, the term “PAGA Release Period” shall refer to the period from and including April 2, 2024 through January 7, 2026, inclusive.

M. PLAINTIFF. The term “Plaintiff” as used herein means Jenae Heitkamp.

N. PLAINTIFF’S COUNSEL. The term “Plaintiff’s Counsel” as used herein means Keller Grover LLP and Law Offices of Alex P. Katofsky, A Professional Company.

O. SETTLEMENT ADMINISTRATOR. The term “Settlement Administrator” as used herein means **Phoenix Settlement Administrators**, which will be responsible for the administration of the settlement embodied in this Agreement and all related matters.

P. SETTLEMENT AMOUNT. Except as provided herein, the term “Settlement Amount” means a fund in the all-inclusive sum of \$195,000 which shall be paid by Defendant. The

Settlement Amount shall cover, resolve, and fully satisfy the Administrative Costs and all amounts owed to Plaintiff, the PAGA Group, the LWDA, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and litigation costs.

III. BACKGROUND

A. On June 9, 2025, Plaintiff filed her Complaint in San Francisco Superior Court against Defendant for penalties pursuant to Labor Code § 2699(f) for alleged violations and penalties under Labor Code §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 226.8, 423.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802. Counsel for the Parties met and conferred with respect to the potential settlement of the Litigation and Defendant requested an early evaluation conference pursuant to Labor Code § 2699.3(f). Pursuant to these discussions, the Parties agreed to exchange additional informal discovery prior to the early evaluation conference. The Parties subsequently exchanged additional informal discovery, including information and documentation concerning the claims set forth in the Litigation and information regarding the number of PAGA Group members and the total pay periods for which services were performed by the PAGA Group during the PAGA Release Period.

B. Plaintiff, Defendant, and their respective counsel have engaged in good faith, arms-length negotiations. On January 7, 2026 the Parties participated in an early evaluation conference with the Honorable Brian L. Ferrall, as well as a follow-up session on January 13, 2026. This resulted in reaching a resolution of this matter. The Parties have now entered into a more detailed, formalized Settlement Agreement for submission to the Court for approval.

C. Plaintiff's counsel has conducted an investigation of the law and facts relating to the claims asserted in the Litigation and has concluded, taking into account the sharply contested issues involved, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the Plaintiff, the State of California, and the members of the PAGA Group pursuant to this Agreement, and that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable, adequate, and in the best interests of the State of California and the PAGA

Group. Plaintiff, on her own behalf and as a representative pursuant to PAGA, has agreed to settle the Litigation with Defendant on the terms set forth herein.

D. Defendant has concluded that, because of the substantial expense of defending against the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience involved, and the concomitant disruption to its business operations, it is in its best interests to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted against it in the Litigation. However, Defendant nevertheless desires to settle the Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation, and for the purpose of putting to rest the controversies engendered by the Litigation.

E. This Agreement is intended to and does effectuate the full, final, and complete resolution of all allegations and claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged violations of the Labor Code on behalf of the PAGA Group, including all claims that were and/or could have been alleged based on the factual allegations and identified Labor Code sections in the in the LWDA Letter.

IV. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendant denies in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted approval of this Agreement, pursuant to California Code of Civil Procedure § 664.6 the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Agreement consistent with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this Agreement and all orders and judgments entered in connection therewith.

V. STATEMENT OF NO ADMISSION

A. Defendant denies liability to Plaintiff and to the PAGA Group upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims

made against it in the LWDA Letter and/or the Litigation.

B. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case or 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. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported 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, or for any other purpose. This includes, without limitation, use in any other representative action, class action, PAGA action, arbitration, administrative proceeding, or agency proceeding against Defendant or any Released Party. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement, or any orders or judgments of the Court entered in connection with the settlement.

C. None of the documents produced or created by Plaintiff or her counsel in connection with the approval of this settlement or administration of this settlement constitute, and are not intended to constitute, an admission by Defendant 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.

D. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any group should or would be given collective or representative treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions regarding this Agreement will be admissible in any court or other tribunal regarding the propriety of collective or representative treatment. In the event that this Agreement is not

approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation. Nothing in this Agreement shall be construed as an admission that Plaintiff or any member of the PAGA Group was an employee of Defendant at any time.

VI. RELEASE

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and Plaintiff's Counsel will release claims against all Released Parties as follows:

A. PLAINTIFF'S RELEASE.

Plaintiff and Plaintiff's respective former and present representatives, agents, attorneys (including Plaintiff's Counsel), administrators, successors and assigns generally, release and discharge Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties") from all claims, transactions or occurrences [that occurred during the PAGA Release Period], including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at anytime or based on occurrences outside the PAGA Release Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

B. PLAINTIFF'S WAIVER OF RIGHTS UNDER CIVIL CODE SECTION 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

C. RELEASE BY PAGA GROUP.

All members of the PAGA Group are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Release Period and the PAGA Notice.

SCOPE OF PAGA RELEASE.

~~Upon approval of this settlement by the Court, Plaintiff, individually and as a representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Litigation, agrees to release Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties"), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, that were or could have been alleged on behalf of the PAGA Group in the LWDA Notice based on the facts and theories expressly stated therein, and the Labor Code sections identified therein, including, but not limited to, any claim for failure to pay wages (including minimum wage and overtime), claims regarding failure to pay for off-the-clock work, failure to authorize and permit rest periods including first and subsequent rest periods, short, late, and/or interrupted rest periods, failure to count rest periods as paid time, failure to pay rest period premium payments including failure to pay rest period premium payments at the proper rate of pay, failure to timely pay wages during employment, failure to timely pay wages upon separation of employment, failure to issue accurate wage statements, failure to reimburse business expenses, claims alleging willful misclassification as an independent contractor, and/or claims alleging Defendant required members of the PAGA Group to agree to unlawful terms and conditions. This Release shall include all claims and theories~~

arising under California Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 226.8, 423.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as well as all applicable Industrial Welfare Commission (“IWC”) Wage Orders during the PAGA Release Period (the “Released Claims”).

The Parties further agree to release all claims for costs, fees, and interest related to the Released Claims. The Parties further agree that this Agreement and judgment to be entered by the Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.

~~D. — GENERAL RELEASE BY PLAINTIFF ONLY.~~

In addition to the release in Section V.A., in exchange for the consideration set forth in this Agreement, Plaintiff makes the additional following general release of all claims, known or unknown: Plaintiff releases Defendant and the Released Parties, from all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, regulation, or ordinance including but not limited to those arising out of, relating to, or in connection with Plaintiff’s employment with Defendant through the date of this Agreement as well as any and all acts or omissions by or on the part of Defendant through the date of this Agreement. (The release set forth in this Paragraph shall be referred to hereinafter as the “Plaintiff’s General Release.”) With respect to the Plaintiff’s General Release, the Plaintiff stipulates and agrees that, upon the Effective Date, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

~~A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.~~

1 ~~Cal. Civ. Code § 1542. Accordingly, if the facts relating in any manner to this settlement~~
2 ~~are found hereafter to be other than or different from the facts now believed to be true, the release~~
3 ~~of claims contained in the Plaintiff's General Release shall be effective as to all unknown claims.~~

4 ~~However, specifically excluded from this general release of claims by Plaintiff relating to~~
5 ~~workers' compensation, unemployment insurance, or any other claims that cannot be waived by~~
6 ~~applicable law.~~

7 **VI.VII. SETTLEMENT ADMINISTRATOR**

8 Plaintiff and Defendant, through their respective counsel, have selected Phoenix
9 Settlement Administrators as the Settlement Administrator to administer the settlement, which
10 includes but is not limited to distributing and responding to inquiries about the Notice of
11 Settlement and calculating all amounts to be paid from the Settlement Amount, including the
12 Individual Settlement Payments. The Administrative Costs are estimated to be no more than
13 \$4,000.00 and will be paid from the Settlement Amount. Any charges and expenses of the
14 Settlement Administrator greater than the allocated \$4,000.00 will come from the Settlement
15 Amount and will be subject to approval by the Court. If the actual Administrative Costs are less
16 than the Parties' estimation, the difference between the actual and estimated Administrative Costs
17 will be included in the Net Settlement Amount.

18 **VII.VIII. NOTICE**

19 Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice
20 of Settlement (the "Notice"), in the form attached hereto as **Exhibit "A"** which in substance will
21 be provided to the members of the PAGA Group as follows:

22 As soon as practicable following approval of the settlement, but no later than 21 calendar
23 days after the Effective Date, Defendant will provide to the Settlement Administrator the
24 following information about each PAGA Group member: (1) name; (2) last known home address;
25 (3) number of pay periods as a PAGA Group member during the PAGA Release Period; and (4)
26 social security number (collectively referred to as the "PAGA List"). To protect the PAGA
27 Group's rights to privacy, the Administrator must maintain the PAGA List in confidence, use the
28 PAGA List only for purposes of this Settlement and for no other purpose, and restrict access to

the PAGA List to Administrator employees who need access to the PAGA List to effect and perform under this Agreement.

The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database, which provides updated addresses for any individual who has moved in the previous four years and who has notified the U.S. Postal Service of a forwarding address, to obtain current address information. Within 28 calendar days after the Settlement Administrator's receipt of the Settlement Amount, the Settlement Administrator will mail the Notice together with the Individual Settlement Payments to all PAGA Group members by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator. If a check 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 search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, after the check void date, the monies represented by the check shall be remitted to California's unclaimed property fund in the name of the applicable PAGA Group member.

~~be sent to the LWDA.~~

VIII.X. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. DISTRIBUTION

The portion of the Net Settlement Amount to be distributed to the PAGA Group (*i.e.*, 35% of the Net Settlement Amount) shall be divided by the total number of full pay periods which the PAGA Group performed services for Defendant during the PAGA Release Period, with partial pay periods rounded up to the next whole number and as determined by Defendant's records. This amount shall be known as the "Pay Period Value." Each member of the PAGA Group shall be paid an amount equal to the number of individual pay periods he or she performed services for Defendant during the PAGA Release Period multiplied by the Pay Period Value.

The portion of the Net Settlement amount to be distributed to the LWDA (*i.e.*, 65% of the Net Settlement Amount) shall be paid by the Administrator from the Gross Settlement Amount to

the LWDA within 28 calendar days after the Settlement Administrator's receipt of the Settlement Amount.

B. FUNDING OF THE SETTLEMENT AMOUNT.

The funding of the Settlement Amount by Defendant will be completed at one time with funds provided to and escrowed by the Settlement Administrator. The Settlement Amount shall be deposited with the Settlement Administrator by Defendant within 10 calendar days of the date of the Effective Date.

If a PAGA Group member is deceased at the time of distribution, the Settlement Administrator shall distribute the deceased PAGA Group member's Individual Settlement Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA Group member's estate and attempt to place the deceased PAGA Group member's payment in escrow or similar disposition such that any competing heirs may take whatever action they wish to resolve ultimate disposition of such money and the Settlement Administrator and the Parties hereto may disclaim any further interest in or obligation in relation to such money.

Settlement checks will specifically indicate that they are void if not negotiated within ~~150~~ 180 days of their issuance. Any settlement checks that remain uncashed ~~150-180~~ or more calendar days after issuance by the Settlement Administrator shall be voided and the Settlement Administrator will remit the entire amount of each PAGA Group member's uncashed Individual Settlement Payment to California's unclaimed property fund in the name of the applicable PAGA Group member.

The Administrator shall promptly send a replacement check to any member of the PAGA Group whose original check was lost or misplaced and which is requested by the PAGA Group member prior to the void date.

C. TIME FOR DISTRIBUTION OF THE ENHANCEMENTS TO PLAINTIFF, ATTORNEYS' FEES AND LITIGATION COSTS TO PLAINTIFF'S COUNSEL, THE LWDA PAYMENT AND ADMINISTRATIVE COSTS.

The Settlement Administrator shall cause the Court approved enhancement to Plaintiff, attorneys' fees and litigation costs awarded to Plaintiff's Counsel, and the LWDA Payment to be paid within 28 days of the funding of the Settlement Amount. The Settlement Administrator may pay itself the Court-approved administrative costs once the Individual Settlement Payments have been mailed out.

~~IX.X.~~ RENEGOTIATION IF CONCERNS ARE RAISED

A. This Agreement contains no escalator clause and no automatic increase in the Gross Settlement Amount shall occur based on any inquiry, objection, or concern raised by the Court or the LWDA.

B. If the Court or the LWDA expresses concern regarding any Material Term of this Agreement, the Parties shall meet and confer in good faith to determine whether mutually acceptable revisions can be made.

C. Before requesting any contested ruling on a matter involving a Material Term, the Parties agree to seek further guidance from the Honorable Brian L. Ferrall, if available, in light of that judicial officer's prior involvement in the Parties' Early Evaluation Conferences, or from such other judicial officer as the Court may designate.

D. Neither Party shall be required to agree to any modification that materially alters the consideration or risk allocation reflected in this Agreement.

E. If the Parties are unable to agree to mutually acceptable revisions after good-faith efforts, either Party may withdraw from this Agreement, in which event the Agreement shall become null and void.

F. All negotiations and discussions undertaken pursuant to this section are compromise negotiations and shall be treated in accordance with California Evidence Code section 1152.

~~X.XI.~~ NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits

under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this 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 Defendant's benefit plan, policy or bonus program. Defendant retains the right 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 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 purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Agreement.

~~XI.~~XII. PLAINTIFF'S COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS

Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's Counsel shall not seek or receive an amount more than one-third of the Settlement Amount, for all past and future attorneys' fees necessary to prosecute, settle, and administer the Litigation and this Agreement. Additionally, Defendant shall not oppose an application by Plaintiff's Counsel for reimbursement of all past and future litigation costs and expenses necessary to prosecute, settle, and administer the Litigation and this Agreement, which Plaintiff's Counsel estimates will not exceed \$5,000. Any attorneys' fees or litigation costs awarded to Plaintiff's Counsel by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and the Administrator shall pay Plaintiff's Counsel fees and expenses and report the payments on one or more IRS 1099 forms. This amount shall include all attorneys' fees, litigation costs, and expenses for which Plaintiff and Plaintiff's Counsel could claim in this Litigation under any legal theory whatsoever. Released Parties shall have no liability to Plaintiff's Counsel or any other Plaintiff's counsel arising from any claim to any portion of any fee and/or litigation costs award. Should the Court approve a lesser percentage or amount of fees and/or litigation costs than the amount that Plaintiff's Counsel seeks, then the unapproved portion or portions shall revert to the Net Settlement Amount. The award of fees and/or litigation costs to

Plaintiff's Counsel is not a material term of this Agreement and does not give rise to a basis to abrogate this Agreement.

XII.XIII. ENHANCEMENT TO PLAINTIFF

Defendant shall not oppose an application by Plaintiff to seek or receive an amount not to exceed \$5,000 for her participation in and assistance with the Litigation. Any enhancement awarded to Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099-misc. If the Court approves an enhancement of less than \$5,000 then the unapproved portion shall revert into the Net Settlement Amount. The award of an enhancement payment to Plaintiff is not a material term of this Agreement and does not give rise to a basis to abrogate this Agreement.

XIII.XIV. TAXATION AND ALLOCATION

For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"): 100% as penalties. The Parties agree that all payments under this Agreement are penalties and not wages, compensation for services, or remuneration for employment, and no portion shall be treated as wages for any purpose.

PAGA Group members may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

XIV.XV. COURT APPROVAL

Plaintiff's Counsel will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code § 2699 (f)(2) including (i) a draft proposed Order Granting Approval of PAGA Settlement; and (ii) a signed declaration from Plaintiff's Counsel attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3 (a)), operative Complaint (Labor Code § 2699 (l)(1)), this Agreement (Labor Code § 2699 (l)(2))).

This Agreement is contingent upon approval by the Court. Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure approval of this Agreement, to the extent not inconsistent with the terms of this Agreement.

~~XV.~~XVI. **APPRAISAL AND CERTIFICATION BY THE SETTLEMENT**

ADMINISTRATOR

The Settlement Administrator shall keep Plaintiff's Counsel and Defendant's Counsel apprised of all distributions from the Settlement Amount. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to Plaintiff's Counsel and Defendant's Counsel. The Settlement Administrator shall provide a final accounting, including the names of payees and the amounts of the Individual Settlement Payments.

~~XVI.~~XVII. **MISCELLANEOUS PROVISIONS**

A. STAY OF LITIGATION.

Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending approval of this Agreement by the Court.

B. INTERPRETATION OF THE AGREEMENT.

This Agreement constitutes the entire agreement between Plaintiff and Defendant. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. This Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of law's provisions. Any claim arising out of or relating to this Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of San Francisco, and Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. Plaintiff, on her own behalf and on behalf of the PAGA Group and the State of California, and Defendant participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any ambiguity in this Agreement should be construed against the other.

1 The terms and conditions of this Agreement constitute the exclusive and final
2 understanding and expression of all agreements between Plaintiff and Defendant with respect to
3 the resolution of the Litigation. This Agreement may be modified only by a writing signed by
4 counsel for all Parties or their successors-in-interest.

5 **C. FURTHER COOPERATION.**

6 Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare
7 and execute all documents, to seek approval of this Agreement from the Court, and to do all
8 things reasonably necessary or convenient to consummate this Agreement as expeditiously as
9 possible.

10 **D. COUNTERPARTS.**

11 This Agreement may be executed in one or more actual or non-original counterparts, all
12 of which will be considered one and the same instrument and all of which will be considered
13 duplicate originals.

14 **E. AUTHORITY.**

15 Each individual signing below warrants that he or she has the authority to execute this
16 Agreement on behalf of the party for whom or which that individual signs.

17 **F. NO THIRD-PARTY BENEFICIARIES.**

18 Plaintiff, members of the PAGA Group, the State of California, Defendant and Released
19 Parties are direct beneficiaries of this Agreement. The Parties are not aware of any third-party
20 beneficiaries.

21 **G. DEADLINES FALLING ON WEEKENDS OR HOLIDAYS.**

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

24 **H. SEVERABILITY.**

25 If any one or more of the provisions contained in this Agreement shall for any reason be
26 held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
27 unenforceability shall in no way effect any other provision.

28 **I. DEFENDANT'S FEES AND COSTS**

1 All of Defendant's own legal fees, costs and expenses incurred in this Litigation shall be
2 borne by Defendant.

3 **J. WAIVER OF RIGHT TO APPEAL**

4 Provided the Court's judgment is consistent with the terms and conditions of this
5 Agreement, the Parties and their respective counsel waive all rights to appeal from the judgment,
6 including all rights to post-judgment and appellate proceedings, the right to file motions to vacate
7 judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not
8 include any waiver of the right to oppose such motions, writs or appeals. If another party appeals
9 the judgment, the Parties' obligations to perform under this Agreement will be suspended until
10 such time as the appeal is finally resolved and the judgment becomes final.

11 **K. REPRESENTATION OF PROCEDURAL CHANGES**

12 Defendant expressly denies any wrongdoing, liability, misclassification, or violation of
13 the Labor Code. Without admitting liability or conceding that any modification was legally
14 required, Defendant represents that it has reviewed the policies and practices implicated by the
15 allegations in the Action and, where Defendant deemed appropriate, has evaluated or
16 implemented measures intended to align its practices with Defendant's understanding of
17 applicable California law. Nothing in this Agreement shall be construed as an admission that
18 Defendant previously acted unlawfully, that any specific remedial measure was required, or that
19 any particular policy or practice was deficient.

20
21 [Signatures on next page]
22
23
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27
28

APPROVED AS TO CONTENT:

DATED: ~~June~~ September __, 2026

JENAE HEITKAMP

DATED: ~~June~~ September __, 2026

BRIGHTSIDE HEALTH, INC.

By: _____

APPROVED AS TO FORM:

DATED: ~~June~~ September __, 2026

KELLER GROVER LLP

By: _____
ERIC A. GROVER
ROBERT W. SPENCER
Attorney for Plaintiff

DATED: ~~June~~ September __, 2026

**LAW OFFICES OF ALEX P. KATOFISKY,
A PROFESSIONAL CORPORATION**

By: _____
ALEX P. KATOFISKY
Attorney for Plaintiff

DATED: ~~June~~ September __, 2026

MCDERMOTT WILL & SCHULTE LLP

By: _____
MARIA C. RODRIGUEZ
ELVIRA R. KRAS
MEGAN A. LEE
Attorneys for Defendant

EXHIBIT A

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

JENAE HEITKAMP, on behalf of herself,
and all aggrieved employees,

Plaintiff,

v.

BRIGHTSIDE HEALTH, INC., and
DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-25-626072

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS
(CAL. LABOR CODE §§ 2698, ET SEQ.)**

You have been identified as [a member of the PAGA Group in the above referenced matter.](#) The PAGA Group means all persons engaged by Defendant in California and classified as an independent contractor remote therapist who performed services for Defendant during the PAGA Release Period.~~an remote therapist classified as an independent contractor who performed therapy services through Brightside Health, Inc. (“Brightside Health” or “Defendant”) in California April 2, 2024 through January 7, 2026, inclusive (“Remote Therpaists”).~~

On June 9, 2025, a complaint was filed in San Francisco County Superior Court (the “Court”) to recover civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* (“PAGA”). The lawsuit alleges that ~~Remote Therapists~~[PAGA Group members](#) were misclassified as independent contractors and not paid for all hours worked, were not provided proper rest breaks, were not provided with accurate itemized wage statements, were not paid all wages due at the time of discharge or voluntary quit, were not paid in a timely manner, were not reimbursed for business expenses, were willfully misclassified as independent contractors, and were required to agree to unlawful terms and conditions.

Brightside denies all of Plaintiff’s allegations and disputes all of Plaintiff’s claims, and contends that it complied with all applicable laws. The Court has made no determination whether Plaintiff or Brightside is correct on the merits and, by agreeing to settle, Brightside does not admit any violations or concede the merits of any claim.

Plaintiffs and Defendant reached a settlement of the claims for PAGA civil penalties alleged in the lawsuit. The Court approved the settlement on _____. By law, 65% of the civil penalties are paid to the State of California’s Labor and Workforce Development Agency (“LWDA”) for the enforcement of the state’s labor laws and 35% are paid to the PAGA Group.

Pursuant to the settlement agreement, the amount to be distributed to the PAGA Group shall be divided by the total number of pay periods, with partial pay periods rounded up to the next whole number, as determined by Defendant’s records, worked by all ~~Remote Therapists~~[PAGA Group members](#) between April 4², 2024 through January 7, 2026, inclusive. This amount shall be known as the “Pay Period Value.” Each ~~Remote Therapist~~[member of the PAGA Group](#) shall be paid an

amount equal to the number of individual pay periods he or she worked for Defendant between April 42, 2024 through January 7, 2026, inclusive. Your Individual Settlement Payment is provided with this Notice, and will remain negotiable for 150-180 days. If you do not cash, deposit, or negotiate your Individual Settlement Payment within 150-180 days, the check will be canceled and the funds will be sent to California's unclaimed property fund in your name.

The Court-approved settlement contains the following release of claims, ~~which is meant to bar any future litigation by Plaintiff and the California Labor & Workforce Development Agency ("LWDA"), either directly or through any other proxy or agent:~~

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

RELEASE BY PAGA GROUP.

RELEASE BY AGGRIEVED EMPLOYEES.

All members of the PAGA Group are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Release Period and the PAGA Notice.

The Released Parties are defined as Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof.

~~Upon approval of this settlement by the Court, Plaintiff, individually and as a representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Litigation, agrees to release Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties"), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, that were or could have been alleged on behalf of the PAGA Group in the LWDA Notice based on the facts and theories expressly stated therein, and the Labor Code sections identified therein, including, but not limited to, any claim for failure to pay wages (including minimum wage and overtime), claims regarding failure to pay for off the clock work, failure to authorize and permit rest periods including first and subsequent rest periods, short, late, and/or interrupted rest periods, failure to count rest periods as paid time, failure to pay rest period premium payments including failure to pay rest period premium payments at the proper rate of pay, failure to timely pay wages during employment, failure to timely pay wages upon separation of employment, failure to issue accurate wage statements, failure to reimburse business expenses, claims alleging willful misclassification as an independent contractor, and/or claims alleging Defendant required members of the PAGA Group to agree to unlawful terms and conditions. This Release shall include all claims and theories arising under California Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 226.8, 423.5,~~

~~510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as well as all applicable Industrial Welfare Commission (“IWC”) Wage Orders during the PAGA Release Period (the “Released Claims”).~~

This release of claims does not cover any other claims you may have against Defendant.

If you have any questions or would like a copy of the settlement agreement approved by the Court, please contact the Settlement Administrator at _____.

EXHIBIT 11

VI. RELEASE

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and Plaintiff's Counsel will release claims against all Released Parties as follows:

A. PLAINTIFF'S RELEASE.

Plaintiff and Plaintiff's respective former and present representatives, agents, attorneys (including Plaintiff's Counsel), administrators, successors and assigns generally, release and discharge Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties") from all claims, transactions or occurrences [that occurred during the PAGA Release Period], including, but not limited to: all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at anytime or based on occurrences outside the PAGA Release Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

B. PLAINTIFF'S WAIVER OF RIGHTS UNDER CIVIL CODE SECTION 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

C. RELEASE BY PAGA GROUP.

All members of the PAGA Group are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and

1 ~~assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably~~
2 ~~could have been alleged, based on the facts and allegations in the Operative Complaint that are~~
3 ~~alleged to have occurred during the PAGA Release Period and the PAGA Notice.~~

4 **~~SCOPE OF PAGA RELEASE.~~**

5 ~~Upon approval of this settlement by the Court, Plaintiff, individually and as a~~
6 ~~representative acting as a proxy or agent of the LWDA, a State of California Executive Branch~~
7 ~~Agency, in this Litigation, agrees to release Defendant and Defendant's partners, parents,~~
8 ~~subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties"), of~~
9 ~~and from any and all claims under the California Labor Code Private Attorneys General Act of~~
10 ~~2004 ("PAGA"), Labor Code §§ 2698, et seq., that were or could have been alleged on behalf of~~
11 ~~the PAGA Group in the LWDA Notice based on the facts and theories expressly stated therein,~~
12 ~~and the Labor Code sections identified therein, including, but not limited to, any claim for failure~~
13 ~~to pay wages (including minimum wage and overtime), claims regarding failure to pay for off-~~
14 ~~the clock work, failure to authorize and permit rest periods including first and subsequent rest~~
15 ~~periods, short, late, and/or interrupted rest periods, failure to count rest periods as paid time,~~
16 ~~failure to pay rest period premium payments including failure to pay rest period premium~~
17 ~~payments at the proper rate of pay, failure to timely pay wages during employment, failure to~~
18 ~~timely pay wages upon separation of employment, failure to issue accurate wage statements,~~
19 ~~failure to reimburse business expenses, claims alleging willful misclassification as an~~
20 ~~independent contractor, and/or claims alleging Defendant required members of the PAGA Group~~
21 ~~to agree to unlawful terms and conditions. This Release shall include all claims and theories~~
22 ~~arising under California Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7,~~
23 ~~226.8, 423.5, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as well as all applicable~~
24 ~~Industrial Welfare Commission ("IWC") Wage Orders during the PAGA Release Period (the~~
25 ~~"Released Claims").~~

26 ~~The Parties further agree to release all claims for costs, fees, and interest related to the~~
27 ~~Released Claims. The Parties further agree that this Agreement and judgment to be entered by the~~
28 ~~Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or~~

1 through any other proxy or agent, from any future prosecution of any of the Released Claims
2 against any of the Released Parties.

3 ~~A. GENERAL RELEASE BY PLAINTIFF ONLY.~~

4 In addition to the release in Section V.A., in exchange for the consideration set forth in
5 this Agreement, Plaintiff makes the additional following general release of all claims, known or
6 unknown: Plaintiff releases Defendant and the Released Parties, from all claims, demands, rights,
7 liabilities, and causes of action of every nature and description whatsoever, known or unknown,
8 asserted or that might have been asserted, whether in tort, contract, or for violation of any state or
9 federal statute, rule, regulation, or ordinance including but not limited to those arising out of,
10 relating to, or in connection with Plaintiff's employment with Defendant through the date of this
11 Agreement as well as any and all acts or omissions by or on the part of Defendant through the
12 date of this Agreement. (The release set forth in this Paragraph shall be referred to hereinafter as
13 the "Plaintiff's General Release.") With respect to the Plaintiff's General Release, the Plaintiff
14 stipulates and agrees that, upon the Effective Date, Plaintiff shall be deemed to have expressly
15 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
16 benefits of Section 1542 of the California Civil Code, or any other similar provision under
17 federal or state law, which provides:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
19 THAT THE CREDITOR OR RELEASING PARTY DOES
20 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
21 FAVOR AT THE TIME OF EXECUTING THE RELEASE
AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR OR RELEASED PARTY.

22 Cal. Civ. Code § 1542. Accordingly, if the facts relating in any manner to this settlement
23 are found hereafter to be other than or different from the facts now believed to be true, the release
24 of claims contained in the Plaintiff's General Release shall be effective as to all unknown claims.

25 However, specifically excluded from this general release of claims by Plaintiff relating to
26 workers' compensation, unemployment insurance, or any other claims that cannot be waived by
27 applicable law.

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~~any individual who has moved in the previous four years and who has notified the U.S. Postal Service of a forwarding address, to obtain current address information. Within 28 calendar days after the Settlement Administrator's receipt of the Settlement Amount, the Settlement Administrator will mail the Notice together with the Individual Settlement Payments to all PAGA Group members by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and return all undeliverable Notices to the Settlement Administrator. If a check 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 search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, after the check void date, the monies represented by the check shall be sent to the LWDA.~~

EXHIBIT 12



The State Bar *of California*

Rule 1.5.1 Fee Divisions Among Lawyers (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) Lawyers who are not in the same law firm* shall not divide a fee for legal services unless:
 - (1) the lawyers enter into a written* agreement to divide the fee;
 - (2) the client has consented in writing,* either at the time the lawyers enter into the agreement to divide the fee or as soon thereafter as reasonably* practicable, after a full written* disclosure to the client of: (i) the fact that a division of fees will be made; (ii) the identity of the lawyers or law firms* that are parties to the division; and (iii) the terms of the division; and
 - (3) the total fee charged by all lawyers is not increased solely by reason of the agreement to divide fees.
- (b) This rule does not apply to a division of fees pursuant to court order.

Comment

The writing* requirements of paragraphs (a)(1) and (a)(2) may be satisfied by one or more writings.*

NEW RULE OF PROFESSIONAL CONDUCT 1.5.1
(Former Rule 2-200)
Fee Divisions Among Lawyers

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct ("Commission") evaluated current rule 2-200 (Financial Arrangements Among Lawyers) in accordance with the Commission Charter, including the national standard of the ABA counterpart, Model Rule 1.5(e) (concerning fee divisions among lawyers) and the Restatement of Law Governing Lawyers counterpart, Restatement § 47 (Fee Splitting Between Lawyers Not In The Same Firm). The result of the Commission's evaluation is proposed rule 1.5.1 (Fee Divisions Among Lawyers). Refer to proposed rule 7.2(b) for a discussion of current rule 2-200(B).

Rule As Issued For 90-day Public Comment

A key topic addressed by this proposed rule is the regulation of fee sharing by lawyers who are not in the same law firm, including typical referral fees. Most states follow Model Rule 1.5(e) that permits lawyers to divide a fee only to the extent that the referring lawyer is compensated in proportion for work actually done on the matter or if the referring lawyer assumes joint responsibility for the matter. The California rule is one of a minority of states that permits a "pure referral fee," i.e., California permits lawyers to be compensated for referring a matter to another lawyer without requiring the referring lawyer's continued involvement in the matter. In *Moran v. Harris* (1982) 131 Cal.App.3d 913, the California Court of Appeal held that the payment of referral fees is not contrary to public policy. The court stated, "If the ultimate goal is to assure the best possible representation for a client, a forwarding fee is an economic incentive to less capable lawyers to seek out experienced specialists to handle a case. Thus, with marketplace forces at work, the specialist develops a continuing source of business, the client is benefited and the conscientious, but less experienced lawyer is subsidized to competently handle the cases he retains and to assure his continued search for referral of complex cases to the best lawyers in particular fields." (*Id.* at 921-922.) The Commission's study found that no case since *Moran* had questioned the policy of permitting pure referral fees. In fact, the ABA's Ethics 2000 Commission itself had recommended that the Model Rules permit pure referral fees, but that position was rejected by the ABA House of Delegates.

That is not to say that the proposed rule remains the same as the current rule. Rather, proposed rule 1.5.1 implements two material changes intended to increase protection for clients. First, the agreement between the lawyers to divide a fee must now be in writing and second, the client must consent to the division after full disclosure at or near the time that the lawyers enter into the agreement to divide the fee. Under current rule 2-200, there is no express requirement that the agreement between the lawyers be in writing and case law has held that client consent to the fee division need not be obtained until the fee is actually divided, which might not occur until years after the lawyers have entered into their agreement. These changes were made because an underlying reason for the rule is to assure that the client's representation is not adversely affected as a result of an agreement to divide a fee. Deferring disclosure and client consent to the time the fee is divided denies the client a meaningful opportunity to consider the concerns the rule is intended to address. (See *Mink v. Maccabee* (2004) 121 Cal.App.4th 835.)

Post-Public Comment Revisions

After consideration of comments received in response to the initial 90-day public comment period, the Commission made a non-substantive change to clarify that compliance with paragraphs (a)(1) and (a)(2) may be satisfied in either a single document, or through separate documents. The Commission also made other non-substantive stylistic changes.

With these changes, the Commission voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 1.5.1 at its November 17, 2016 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. In the enumerated list in subparagraph (a)(2), semicolons were substituted for commas.

Rule ~~2-200 Financial Arrangements~~1.5.1 Fee Divisions Among Lawyers
(Redline Comparison to the California Rule Operative Until October 31, 2018)

- (~~Aa~~) ~~A member~~Lawyers who are not in the same law firm* shall not divide a fee for legal services ~~with a lawyer who is not a partner of, associate of, or shareholder with the member~~ unless:
- (1) the lawyers enter into a written* agreement to divide the fee;
 - (~~4~~2) ~~The~~the client has consented in writing ~~thereto,*~~ either at the time the lawyers enter into the agreement to divide the fee or as soon thereafter as reasonably* practicable, after a full written* disclosure ~~has been made in writing to the client of:~~ (i) the fact that a division of fees will be made ~~and the terms of such;~~ (ii) the identity of the lawyers or law firms* that are parties to the division; and (iii) the terms of the division; and
 - (~~2~~3) ~~The~~the total fee charged by all lawyers is not increased solely by reason of the ~~provision for division of fees and is not unconscionable as that term is defined in rule 4-200~~agreement to divide fees.
- (b) This rule does not apply to a division of fees pursuant to court order.
- (B) ~~Except as permitted in paragraph (A) of this rule or rule 2-300, a member shall not compensate, give, or promise anything of value to any lawyer for the purpose of recommending or securing employment of the member or the member's law firm by a client, or as a reward for having made a recommendation resulting in employment of the member or the member's law firm by a client. A member's offering of or giving a gift or gratuity to any lawyer who has made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future.~~

Comment

The writing* requirements of paragraphs (a)(1) and (a)(2) may be satisfied by one or more writings.*

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **September 24, 2026**, in the case of *Jenae Heitkamp v. Brightside Health, Inc.*, San Francisco Superior Court Case Number CGC-25-626072, I served the foregoing document(s):

SUPPLEMENTAL DECLARATION OF ROBERT W. SPENCER IN SUPPORT OF MOTIONS FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION AND DISMISSING ACTION WITH PREJUDICE AND FOR AN ORDER AWARDING ATTORNEYS' FEES AND COSTS, ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATION FEES

on the interested party(ies) below, using the following means:

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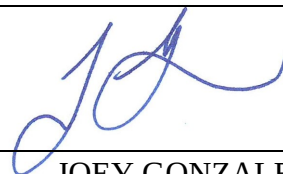
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(BY ELECTRONIC SERVICE- File & ServeXpress) by submitting an electronic version of the documents through the user interface at www.fileandserveexpress.com and by emailing a word version of the document to the above referenced email addresses.



(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JOEY GONZALEZ