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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MICHAEL GARCIA, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

HELP FOR BRAIN INJURED CHILDREN,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 30-2022-01299208-CU-OE-
CXC

[Assigned for all purposes to the Hon. Lon
F. Hurwitz in Dept. CX103]

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

ACTION FILED: December 29, 2022
TRIAL DATE: None set

1 This Joint Stipulation Re: Class Action and Representative Action Settlement
2 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 MICHAEL GARCIA (“Plaintiff”), on behalf of himself and all others similarly situated and
4 aggrieved, on one hand; and defendant HELP FOR BRAIN INJURED CHILDREN, INC.
5 (“Defendant”), on the other hand, in the lawsuits entitled *Michael Garcia v. Help for Brain*
6 *Injured Children, Inc.*, filed in Orange County Superior Court, Case No. 30-2022-01299208-CU-
7 OE-CXC; and *Michael Garcia v. Help for Brain Injured Children, Inc.*, filed in Orange County
8 Superior Court, Case No. 30-2023-01316016-CU-OE-CXC. Plaintiff and Defendant shall be, at
9 times, collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully,
10 finally and forever resolve the claims as set forth herein, based upon and subject to the terms and
11 conditions of this Agreement.

12 **1. DEFINITIONS**

13 **A. “Action” or “Actions”** means the actions entitled *Michael Garcia v. Help for*
14 *Brain Injured Children, Inc.*, filed in Orange County Superior Court, Case No. 30-2022-
15 01299208-CU-OE-CXC (the “Class Action”); and *Michael Garcia v. Help for Brain Injured*
16 *Children, Inc.*, filed in Orange County Superior Court, Case No. 30-2023-01316016-CU-OE-
17 CXC (the “PAGA Action”), to be consolidated by amended complaint in the Class Action.

18 **B. “Aggrieved Employees”** means all persons currently or formerly employed by
19 Defendant, as non-exempt, hourly-paid employees during the PAGA Period in the State of
20 California.

21 **C. “Class Counsel”** means David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel
22 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term
23 “Plaintiff’s Counsel.”

24 **D. “Class Members,” “Settlement Class” or “Settlement Class Members”** means
25 all persons currently or formerly employed by Defendant, as non-exempt, hourly-paid employees
26 during the Class Period in the State of California.

27 **E. “Class Period”** means the period from December 29, 2018 through the
28 Preliminary Approval Date.

1 **F.** “**Class Notice**” means and refers to the notice sent to Class Members after
2 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
3 Agreement.

4 **G.** “**Court**” means the Superior Court of the State of California for the County of
5 Orange.

6 **H.** “**Defendant**” means defendant Help for Brain Injured Children, Inc.

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

11 **J.** “**Final Approval Date**” means the later of: (1) the date the Court signs an Order
12 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
13 objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any
14 appeals have been filed, the date on which they have been resolved or exhausted.

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

17 **L.** “**Gross Settlement Amount**” means a non-reversionary fund in the sum of Three
18 Hundred Thirty-Three Thousand Dollars and Zero Cents (\$333,000.00),¹ which shall be paid by
19 Defendant, from which all payments for the Individual Settlement Payments to Participating
20 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
21 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
22 PAGA Payment and the LWDA Payment shall be paid. It expressly excludes Employer Taxes,
23 which shall be paid by Defendant, separate, apart and in addition to the Gross Settlement Amount.

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

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28 ¹ As may be increased in accordance with Paragraph 17 below.

1 **N. “Individual Settlement Payment”** means a payment to a Participating Class
2 Member of his or her net share of the Net Settlement Amount.

3 **O. “Individual Settlement Share”** means the gross amount of the Net Settlement
4 Amount that a Participating Class Member is projected to receive based on the number of
5 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
6 shall be reflected in his or her Class Notice.

7 **P. “LWDA Payment”** means the payment to the State of California Labor and
8 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
9 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
10 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
11 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand Dollars and
12 Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
13 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
14 based on the Pay Periods worked in the PAGA Period, as further set out herein (*i.e.* the PAGA
15 Payment).

16 **Q. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
17 that is available for distribution to the Participating Class Members after deductions for the Court-
18 approved allocations for Settlement Administration Costs, Service Award to Plaintiff, an award
19 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
20 Payment and the PAGA Payment.

21 **R. “Operative Complaint”** means the First Amended Complaint to be filed in the
22 Class Action.

23 **S. “PAGA Payment”** is the 25% portion of the Twenty Thousand Dollars and Zero
24 Cents (\$20,000.00) that is allocated toward PAGA penalties (Five Thousand Dollars and Zero
25 Cents (\$5,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
26 Pay Periods worked as non-exempt, hourly-paid employees in California in the PAGA Period,
27 which would be in addition to their Individual Settlement Payment if they are Participating Class
28 Members, as well.

1 **T. “PAGA Period”** means the period from January 18, 2022 through Preliminary
2 Approval Date.

3 **U. “Participating Class Members”** means all Settlement Class Members who do
4 not submit a timely and valid Request for Exclusion.

5 **V. “Participating Individual Settlement Share”** means the gross amount of the Net
6 Settlement Amount that a Participating Class Member is eligible to receive based on the number
7 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
8 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
9 may be entitled if he or she is also an Aggrieved Employee.

10 **W. “Pay Period”** means any pay period during which an Aggrieved Employee
11 worked for Defendant for at least one day during the PAGA Period, based on dates of
12 employment (*i.e.* hire dates, re-hire dates (as applicable), and termination dates (as applicable)).

13 **X. “Plaintiff,” “Named Plaintiff” or “Class Representative”** shall refer to plaintiff
14 Michael Garcia.

15 **Y. “Preliminary Approval Date”** means the date on which the Court enters an Order
16 granting preliminary approval of the Settlement.

17 **Z. “Released Parties”** shall mean Defendant and its past, present and/or future,
18 direct and/or indirect, owners, officers, directors, members, managers, employees, agents,
19 representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successor, and
20 assigns.

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

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

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

8 **DD. “Settlement Administration Costs”** means all costs incurred by the Settlement
9 Administrator in administration of the Settlement, including, but not limited to, translating the
10 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
11 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
12 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
13 withholdings, providing declarations, generating Individual Settlement Payment checks and
14 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
15 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
16 of litigation costs and expenses, to Plaintiff for his Service Award and to the LWDA for the
17 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
18 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to
19 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
20 \$7,950.00. If the actual amount of the Settlement Administration Costs is less than \$7,950.00,
21 the difference between \$7,950.00 and the actual Settlement Administration Costs shall be a part
22 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$7,950.00, then
23 such excess will be paid solely from the Gross Settlement Amount and Defendant will not be
24 responsible for paying any additional funds in order to pay these additional costs.

25 **EE. “Settlement Administrator”** means the Third-Party Administrator mutually
26 appointed by the Parties that will be responsible for the administration of the Settlement
27 including, without limitation, translating the Class Notice in Spanish, distribution of the
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Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

FF. “Workweeks” means any week during the Class Period in which any Class Member performed any work for Defendant at least one day, based on hire dates, termination dates (as applicable), and re-hire date(s) (as applicable).

2. BACKGROUND

A. On December 29, 2022, Plaintiff filed a putative wage-and-hour class action, alleging causes of action against Defendant for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for business expenses; (9) engaging in unfair competition (the “Class Action”).

B. Also on December 29, 2022, Plaintiff filed with the LWDA and served on Defendant a notice under Labor Code section 2699.3, stating that Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code violations (the “PAGA Notice”).

C. On March 24, 2023, after sixty-five (65) days had passed without any action by the LWDA with respect to the alleged Labor Code violations, Plaintiff filed a separate representative action under PAGA against Defendant for the Labor Code violations set out in the PAGA Notice (the “PAGA Action”).

D. Thereafter, the Parties agreed to exchange informal discovery and attend an early mediation, in which Plaintiff was provided with, among other things: (1) time and payroll records of approximately 35% of the putative class members for the Class Period; (2) all relevant written wage and hour policy documents of Defendant, including employee handbooks, in effect during the Class Period; and (3) all documents concerning Plaintiff available to Defendant, including Plaintiff’s personnel records.

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1 **E.** On November 30, 2023, the Parties participated in a full-day mediation with Gig
2 Kyriacou, Esquire, a well-regarded mediator, experienced in mediating complex labor and
3 employment matters. With the aid of the mediator’s evaluation, the Parties reached the Settlement
4 to resolve the Action. As part of this Agreement, the Parties agree to stipulate to Plaintiff’s filing
5 of a First Amended Complaint in the Class Action, adding the claims in the PAGA Action to the
6 Class Action, and filing of a request for dismissal without prejudice of the PAGA Action, thereby
7 effectively consolidating the PAGA Action with the Class Action, for purposes of this
8 Settlement. The First Amended Complaint to be filed in the Class Action is the “Operative
9 Complaint.”

10 **F.** Class Counsel have conducted significant investigation of the law and facts
11 relating to the claims asserted in the Action and the PAGA Notice, and have concluded that the
12 Settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement
13 Class, taking into account the sharply contested issues involved, the expense and time necessary
14 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
15 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
16 learned through discovery regarding Plaintiffs’ allegations, and the substantial benefits to be
17 received by Settlement Class Members.

18 **G.** Defendant has concluded that, because of the substantial expense of defending
19 against the Action, the length of time necessary to resolve the issues presented herein, the
20 inconvenience involved and the concomitant disruption to its business operations, it is in its best
21 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
22 claims asserted against it in the Actions and the PAGA Notices. However, Defendant
23 nevertheless desires to settle the Action for the purpose of avoiding the burden, expense and
24 uncertainty of continuing litigation, and for the purpose of putting to rest the controversies
25 engendered by the Action.

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

3 **3. JURISDICTION**

4 The Court has jurisdiction over the Parties and the subject matter of the Action. The
5 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
6 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
7 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
8 pursuant to California Rules of Court, rule 3.769, subdivision (h).

9 **4. STIPULATION OF CLASS CERTIFICATION**

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

12 **5. AMENDED COMPLAINT AND MOTIONS FOR APPROVAL OF**
13 **SETTLEMENT**

14 The Parties hereby stipulate to Plaintiff's filing of a First Amended Complaint in the Class
15 Action, adding the claims in the PAGA Action to the Class Action, and filing of a request for
16 dismissal without prejudice of the PAGA Action, thereby effectively consolidating the PAGA
17 Action with the Class Action, for purposes of this Settlement. The First Amended Complaint in
18 the Class Action is the "Operative Complaint." In the event the Court does not grant final
19 approval of this Settlement, Plaintiff will be permitted to separately refile the PAGA Action
20 without prejudice, the filing shall relate back to the original filing date of the PAGA Action, and
21 Defendant will be estopped from making any argument that there is any adverse effect on the
22 statute of limitations caused by the dismissal of the PAGA Action without prejudice to effectuate
23 this consolidation for the purposes of settlement approval.

24 After full execution of this Agreement, Plaintiff will move for an order granting
25 preliminary approval of the Settlement, approving and directing the mailing of the proposed
26 Notice of Proposed Class Action Settlement and Date for Final Approval Hearing ("Class
27 Notice") attached hereto as **Exhibit "A,"** conditionally certifying the Settlement Class for
28 settlement purposes only, and approving the deadlines proposed by the Parties for the submission

1 of Requests for Exclusion, Workweek Disputes and Objections. If and when the Court
2 preliminarily approves the Settlement, and after administration of the Class Notice in a manner
3 consistent with the Court's Preliminary Approval Order, Plaintiff will move for an order finally
4 approving the Settlement and seek entry of a Judgment in line with this Settlement. The Parties
5 may both respond to any Objections lodged to final approval of the Settlement up to five (5) court
6 days before the Final Approval Hearing.

7 **6. STATEMENT OF NO ADMISSION**

8 Defendant denies any wrongdoing of any sort and further denies any liability to Plaintiff
9 and the Settlement Class with respect to any claims or allegations asserted in the Actions and the
10 PAGA Notices. This Agreement shall not be deemed an admission by Defendant of any claims
11 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
12 in the event that this Agreement is not approved by the Court or any appellate court, is terminated,
13 or otherwise fails to be enforceable, Plaintiffs will not be deemed to have waived, limited or
14 affected in any way any claims, rights or remedies, or defenses in the Action or the PAGA Notice,
15 and Defendant will not be deemed to have waived, limited or affected in any way any of their
16 objections or defenses in the Action and the PAGA Notice. The Parties shall not stipulate to class
17 certification and shall be restored to their respective positions in the Action prior to the entry of
18 this Settlement. Payment of wages under this Settlement neither extend nor alter the Class
19 Members' period of employment with Defendant for any purpose.

20 **7. RELEASE OF CLAIMS**

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

22 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
23 of Judgment and payment by Defendant to the Settlement Administrator of the full Gross
24 Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and
25 all Participating Class Members, for the duration of the Class Period, release the Released Parties
26 from all claims that were alleged or reasonably could have been alleged based on the facts stated
27 in the Operative Complaint, including, but not limited to: (a) all claims for failure to pay overtime
28 wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to provide

1 compliant meal periods or compensation in lieu thereof; (d) all claims for failure to provide
2 compliant rest periods or compensation in lieu thereof; (e) all claims for failure to pay all wages
3 due upon separation from employment; (f) all claims for failure to provide accurate wage
4 statements; (g) all claims for failure to timely pay wages during employment; (h) all claims for
5 failure to indemnify for business expenses; (i) all claims asserted through California Business &
6 Profession Code section 17200, *et seq.*, arising out of the Labor Code violations referenced in
7 the Operative Complaint; and (j) all claims for violation of Labor Code section 432.7 (the “Class
8 Released Claims”).

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

10 For Aggrieved Employees and, to the extent permitted by law, the State of California, the
11 release includes for the duration of the PAGA Period, all claims for PAGA civil penalties asserted
12 in the Operative Complaint and the PAGA Notices or that could have been based on the factual
13 allegations asserted in the Operative Complaint and the PAGA Notice for PAGA civil penalties,
14 including, claims for PAGA penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
15 1197.1, and 2699, in connection with alleged violations of Labor Code sections 96, 98.6, 200,
16 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 245, *et seq.*, 432, 432.7, 432.8, 510, 512,
17 1102.5, 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5, among others (“Released PAGA
18 Claims”). The Released Class Claims and the Released PAGA Claims are hereinafter referred to
19 as the “Released Claims.”

20 **C. Claims Not Released**

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

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1 **D. General Release**

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

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

22 **8. SETTLEMENT ADMINISTRATOR**

23 **A.** The Parties, through their respective counsel, have mutually appointed Phoenix
24 Class Action Administration Solutions ("Phoenix") to administer the Settlement, which includes,
25 but is not limited to, translating the Class Notice to Spanish, distributing, and responding to
26 inquiries about the Class Notice, and calculating all amounts to be paid from the Gross Settlement
27 Amount. Charges and expenses of the Settlement Administrator, currently estimated to be
28 \$7,950.00, will be paid from the Gross Settlement Amount. If the actual amount of the Settlement

Administration Costs is less than \$7,950.00, the difference between \$7,950.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$7,950.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION
PROCESS

A. Notice to the Settlement Class Members

(1) Within seven (7) calendar days after the Preliminary Approval Date, Defendant's Counsel shall provide the Settlement Administrator with information with respect to each Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendant's possession, custody or control; (3) last known telephone number(s) currently in Defendant's possession, custody or control; (4) last known Social Security Number(s) in Defendant's possession, custody or control; and (5) the dates of employment, *i.e.*, hire dates and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class Member ("Class List"). The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly found addresses, if any. Within seven (7) calendar days or soon thereafter of receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The Settlement Administrator shall maintain the Class List and digital copies of all the Settlement Administrator's records evidencing the giving of notice to any Settlement Class Member for at least four (4) years from the Final Approval Date.

(2) The Class Notice will set forth:

(a) the Settlement Class Member's estimated Individual Settlement Payment and Individual PAGA Payment, and the basis for each;

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

22 (3) If a Class Notice from the initial notice mailing is returned as
23 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
24 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
25 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
26 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
27 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
28 Member within three (3) business days. Further, any Class Notices that are returned to the

1 Settlement Administrator with a forwarding address before the Response Deadline shall be
2 promptly re-mailed to the forwarding address affixed thereto.

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

9 **B. Objections**

10 Only Participating Class Members may object to the Settlement. In order for any
11 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
12 do so by mailing a written objection to the Settlement Administrator at the address provided on
13 the Class Notice no later than the Response Deadline. The Settlement Administrator shall email
14 a copy of the Objection forthwith to Class Counsel and Defendant's Counsel and attach copies
15 of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in
16 support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1)
17 the Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social
18 Security Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to
19 appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with
20 whatever legal authority, if any, the Objector asserts in support of the Objection. If a Settlement
21 Class Member objects to the Settlement, the Settlement Class Member will remain a member of
22 the Settlement Class and if the Court approves this Agreement, the Settlement Class Member
23 will be bound by the terms of the Settlement in the same way and to the same extent as a
24 Settlement Class Member who does not object. The date of mailing of the Class Notice to the
25 objecting Settlement Class Member shall be conclusively determined according to the records of
26 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
27 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
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1 expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with the
2 Court up to five (5) court days before the Final Approval Hearing.

3 **C. Requesting Exclusion**

4 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
5 Settlement by mailing a written request to be excluded from the Settlement ("Request for
6 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
7 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
8 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
9 and (4) the following statement: "Please exclude me from the Settlement Class in the *Michael*
10 *Garcia v. Help for Brain Injured Children, Inc.*, matter," or any statement of similar meaning
11 standing for the proposition that the Class Member does not wish to participate in the Settlement.
12 The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
13 Class Counsel and Defendant's Counsel and shall report the Requests for Exclusions that it
14 receives to the Court in its declaration to be provided in advance of the Final Approval Hearing.
15 Any Settlement Class Member who requests exclusion using this procedure will not be entitled
16 to receive any payment from the Settlement and will not be bound by the Settlement Agreement
17 or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class
18 Member who does not opt out of the Settlement by submitting a timely and valid Request for
19 Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released
20 Claims, as well as any Judgment that may be entered by the Court if Final Approval of the
21 Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion
22 and an objection. If a Settlement Class Member submits an Objection and a Request for
23 Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement
24 Class Members who worked during the PAGA Period as Aggrieved Employees that submit a
25 valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their
26 Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

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1 **D. Disputes Regarding Settlement Class Members’ Workweek Data**

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

10 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
11 **PAGA PAYMENTS**

12 Individual Settlement Payments will be calculated and distributed to Participating Class
13 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
14 Members’ respective number of Workweeks worked during the Class Period. Individual PAGA
15 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
16 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees’ respective
17 number of Pay Periods worked during the PAGA Period. Specific calculations of the Individual
18 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
19 follows:

20 **A.** The Settlement Administrator will determine the total number of Workweeks
21 worked by each Settlement Class Member during the Class Period (“Class Member’s
22 Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class
23 Members during the Class Period (“Class Workweeks”). Additionally, the Settlement
24 Administrator will determine the total number of Pay Periods worked by each Aggrieved
25 Employee during the PAGA Period (“Aggrieved Employee’s Pay Periods”), as well as the
26 aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period
27 (“PAGA Pay Periods”).

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

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

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

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

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

22 **11. DISTRIBUTION OF PAYMENTS**

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

24 Participating Class Members will receive an Individual Settlement Payment. Individual
25 Settlement Payment checks shall remain valid and negotiable for one hundred eighty (180)
26 calendar days after the date of their issuance. Thereafter, checks for such payments shall be
27 canceled and funds associated with such checks shall be transmitted to the California Controller's
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Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd (b).

B. Funding of Settlement

Defendant shall, within sixty-five (65) calendar days of the Final Approval Date, make payment of the Gross Settlement Amount (as the same may be increased pursuant to Paragraph 17 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this Agreement and the Court’s Orders, and subject to the conditions described herein.

C. Time for Distribution

Within seven (7) calendar days after payment of the full Gross Settlement Amount and Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as specified in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Costs Award to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the Court; and (6) Individual Settlement Payments to Participating Class Members, less applicable taxes and withholdings, as specified in this Agreement and approved by the Court. All interest accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to Participating Class Members based on the number of Workweeks worked by them in the Class Period.

12. ATTORNEYS’ FEES AND LITIGATION COSTS

Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys’ fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 17 of this Agreement, amounts to One Hundred Sixteen Thousand Dollars Five Hundred Fifty and Zero Cents (\$116,550.00). Class Counsel shall further apply for, and

Defendant shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to Thirty Thousand Dollars and Zero Cents (\$30,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle and obtain Final Approval of the settlement in Action. The "future" aspect of the amounts stated herein includes, without limitation, all time and expenses expended by Class Counsel (including any appeals therein). There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. SERVICE AWARD TO PLAINTIFF

The named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), for his participation in and assistance with the Action. Any Service Award and additional consideration awarded and/or paid to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Award in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

14. TAXATION AND ALLOCATION

a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that the employees' share of taxes and withholdings with respect to the wage portion of the Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be

1 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
2 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
3 be made pursuant to applicable state and/or local withholding codes or regulations.

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

10 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
11 the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of
12 payroll taxes as described above.

13 d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
14 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
15 be relied upon as such within the meaning of United States Treasury Department Circular 230
16 (31 C.F.R. Part 10, as amended) or otherwise.

17 **15. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

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

24 **16. COURT APPROVAL**

25 This Agreement is contingent upon an order by the Court granting Final Approval of the
26 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
27 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
28 shall be restored to their respective positions in the Action prior to entry of this Settlement. If

1 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
2 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
3 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
4 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
5 the Settlement Agreement being voided or not approved, and which control in such an event.

6 **17. INCREASE IN WORKWEEKS**

7 Defendant represents that there are no more than 9,730 Workweeks worked by Class
8 Members during the period from December 29, 2018 through November 20, 2023. In the event
9 the number of Workweeks worked by Class Members during the Class Period increases by more
10 than 10% or 973 Workweeks, then at Defendant's election, either: (1) the Gross Settlement
11 Amount shall be increased proportionally by the Workweeks in excess of 10,703 Workweeks
12 (9,730 Workweeks + 973 Workweeks) multiplied by the Workweek Value; or (2) the Class
13 Period shall end on the date the number of Workweeks reaches 10,703. The Workweek Value
14 shall be calculated by dividing the originally agreed-upon Gross Settlement Amount
15 (\$333,000.00) by 9,730. The Parties agree that the Workweek Value and the Settlement amount
16 to \$34.22 per Workweek. Thus, for example, should there be 11,000 Workweeks in the Class
17 Period, and Defendant elects to increase the settlement proportionately rather than end the Class
18 Period at 10,703 Workweeks, then the Gross Settlement Amount shall be increased by
19 \$10,163.34. $((11,000 \text{ Workweeks} - 10,703 \text{ Workweeks}) \times \$34.22 \text{ per Workweek})$.

20 **18. NOTICE OF JUDGMENT**

21 In addition to any duties set out herein, the Settlement Administrator shall provide
22 notice of the Final Judgment entered in the Action by posting the same on its website for a
23 period of no less than four (4) years.

24 **19. MISCELLANEOUS PROVISIONS**

25 **A. Interpretation of the Agreement**

26 This Agreement constitutes the entire agreement between the Parties with respect to its
27 subject matter. Except as expressly provided herein, this Agreement has not been executed in
28 reliance upon any other written or oral representations or terms, and no such extrinsic oral or

1 written representations or terms shall modify, vary, or contradict its terms. In entering into this
2 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
3 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
4 enforced under the laws of the State of California, both in its procedural and substantive aspects,
5 without regard to its conflict of law provisions. Any claim arising out of or relating to the
6 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
7 Court of the State of California for the County of Orange, and Plaintiff and Defendant hereby
8 consent to the personal jurisdiction of the Court in the Action over it solely in connection
9 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties, and
10 each of them, participated in the negotiation and drafting of this Agreement had available to them
11 the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant may
12 claim that any ambiguity in this Agreement should be construed against the other. The Agreement
13 may be modified only by a writing signed by counsel for the Parties and approved by the Court.

14 **B. Further Cooperation**

15 The Parties and their respective attorneys shall proceed diligently to prepare and execute
16 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
17 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
18 will not take any action inconsistent with this Agreement, including, without limitation,
19 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
20 Party has taken actions inconsistent with the Settlement, including, without limitation,
21 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
22 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
23 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
24 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
25 opt-outs and/or objections.

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The 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.

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.

Plaintiff, Participating Class Members, Aggrieved Employees, the State of California, Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

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.

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

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I. Severability

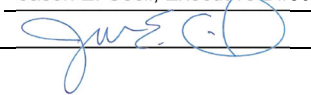
In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way affect any other provision if Defendant's Counsel and Class Counsel, on behalf of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

IT IS SO AGREED:

Dated: 06/27/2024, 2024

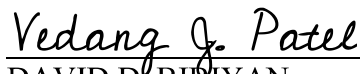

Michael Garcia (Jun 27, 2024 18:35 PDT)
MICHAEL GARCIA
Plaintiff and Class Representative

Dated: 07/15/2024, 2024

HELP FOR BRAIN INJURED CHILDREN,
INC.
Defendant
By: Jason E. Cecil, Executive Director
Its: 

AGREED AS TO FORM:

Dated: April 10, 2025, 2024


DAVID D. BIBIYAN
~~JEFFREY D. KLEIN~~
VEDANG J. PATEL
Counsel for Plaintiff MICHAEL GARCIA

Dated: 4/10/2025, ~~2024~~


ANN K. SMITH
NICHOLAS T. SPENCER
Counsel for Defendant HELP FOR BRAIN
INJURED CHILDREN, INC.