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SEAPORT HOME HEALTH & HOSPICE

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

TIFFANY PATTERSON, individually and on
behalf of others similarly situated,

Plaintiffs,

vs.

BLACK MOUNTAIN HEALTHCARE, LLC.,
D/B/A SEAPORT HOME HEALTH &
HOSPICE; and DOES 1 through 25, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

2/13/2025 1:41:52 PM

Clerk of the Superior Court
By N. Lopez, Deputy Clerk

Case No. 37-2023-00037563-CU-OE-CTL

*[Honorable Gregory W Pollack
Department C-71]*

**JOINT *EX PARTE* APPLICATION FOR
ORDER APPROVING SETTLEMENT
PURSUANT TO PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE § 2698 *ET SEQ.*); [PROPOSED]
ORDER THEREON**

Complaint Filed: August 30, 2023
Trial Date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on February 24, 2025 at 8:45 a.m. in Department C-71
4 of the above-entitled Court, located at 330 W. Broadway, San Diego, California, 92101, Plaintiff
5 Tiffany Patterson (“Plaintiff”) and Defendants Black Mountain Healthcare LLC d/b/a Seaport Home
6 Health & Hospice (“Defendant”) will and hereby do apply *ex parte* for an order approving their
7 Settlement pursuant to the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698
8 et seq.) (“PAGA”).

9 Good cause exists for *ex parte* relief because Labor Code § 2699(l)(2) requires court approval
10 of any PAGA settlement, and the Parties have reached a settlement that they believe is fair, reasonable
11 and adequate. The Parties have provided notice of this settlement to the LWDA as required by statute.
12 Prompt approval will allow for efficient administration and distribution of settlement proceeds to
13 aggrieved employees.

14 This Application is based upon:

- 15 1. This *ex parte* application;
- 16 2. The Settlement Agreement attached as **Exhibit A** hereto;
- 17 3. The PAGA Settlement Notice Cover Letter attached as **Exhibit B** hereto;
- 18 4. The Declaration of Annabel Blanchard filed concurrently herewith;
- 19 5. All pleadings and papers on file in this action; and
- 20 6. Such other evidence and argument as the Court may consider.

1 Plaintiff Tiffany Patterson ("Plaintiff") and Defendant Black Mountain Healthcare LLC d/b/a
2 Seaport Home Health & Hospice ("Defendant") (collectively, Plaintiff and Defendant together are
3 referred to as the "Parties"), by and through their respective counsel of record, hereby apply *ex parte*
4 for an order approving their PAGA settlement, as follows:

5 On or about May 9, 2023, Plaintiff filed a Notice of Alleged California Labor Code Violations
6 pursuant to Labor Code section 2699.3, subd.(a) ("PAGA Notice") with the Labor and Workforce
7 Development Agency ("LWDA") and provided a copy to Defendant via certified mail.

8 On or about August 30, 2023, Plaintiff filed a Complaint against Defendant in the California
9 Superior Court for the County of San Diego (the "Court") entitled *Tiffany Patterson v. Black*
10 *Mountain Healthcare, LLC, d/b/a Seaport Home Health & Hospice.*, Case Number 37-2023-
11 00037563 (the "Operative Complaint"). The Operative Complaint alleged a single cause of action for
12 violations of California Labor Code §§ 2698, et seq., the Private Attorneys General Act. Together,
13 the Operative Complaint and the PAGA Notice shall be referred to herein as the "Action."

14 Defendant vigorously disputes and denies the allegations in the Action, including, without
15 limitation, Plaintiff's and the Aggrieved Employees' (defined below) claim for civil penalties
16 pursuant to PAGA.

17 Plaintiff and Defendant (hereinafter collectively the "Parties") engaged in informal discovery
18 and have exchanged hundreds of documents and significant information related to the claims alleged
19 in this Action, including, but not limited to, information about the number of aggrieved employees,
20 the number of pay periods at issue, and Defendant's employment policies in place during the PAGA
21 Period. Defendants also provided a randomized representative sample of employees' time records
22 and payroll records. The Parties have also conducted extensive independent investigations and
23 evaluations of the claims and defenses in this matter. Both Plaintiff's counsel and Defendant's
24 counsel have significant experience litigating and resolving the type of wage-and-hour claims alleged
25 in the Action, including claims for civil penalties under PAGA.

26 On March 7, 2024, the Parties engaged in a full-day mediation with Kelly A. Knight, Esq.,
27 and with the aid of the mediator's evaluation, the Parties reached a settlement of the Plaintiff's claims
28 an allegations in the Action, memorialized in the Settlement Agreement, a true and correct copy of

1 which is attached hereto as **Exhibit A**. All terms defined in the Settlement Agreement are hereby
2 incorporated by reference. All capitalized terms used herein shall have the same meaning as defined
3 in the Settlement Agreement. According to the Settlement Agreement, the “Released Claims” are
4 defined as any and all claims, transactions, and occurrences that occurred during the PAGA Period,
5 that were alleged in the PAGA Notice and/or the Operative Complaint, or that reasonably could have
6 been alleged based on the factual allegations in the Operative Complaint and/or PAGA Notice,
7 including any and all claims for civil penalties under the Private Attorneys General Act of 2004,
8 California Labor Code sections 2698 *et seq.*, for Defendant’s alleged failure to pay overtime and
9 minimum wages, provide compliant meal and rest periods and associated premium payments, timely
10 pay wages during employment and upon termination, provide compliant wage statements, maintain
11 complete and accurate payroll records, and reimburse necessary business-related expenses in
12 violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d),
13 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage
14 Orders.

15 For the purpose only of the settlement of Plaintiff’s purported representative claim under
16 PAGA, the “Aggrieved Employees” are defined as all current and former non-exempt employees
17 who worked for Defendant within the State of California at any time during the PAGA Period.

18 California Labor Code Section 2699(l)(2) requires that this Court review and approve any
19 settlement pursuant to PAGA.

20 The Parties, by and through their counsel of record herein, agree to seek Court approval of
21 the Settlement Agreement, and now seek Court approval through this *Ex Parte* Application and
22 respectfully request the Court enter the [Proposed] Order for Approval of PAGA Settlement.

23 The Settlement Agreement contemplates:

- 24 a. Issuance of a Court order approving the Settlement; and
- 25 b. Discharge and release by Plaintiff, the State of California, and the Aggrieved
26 Employees of the Released Parties from the Released Claims;

27 The Parties recognize that the issues presented in the Action are likely only to be resolved
28 with extensive and costly pretrial and trial proceedings, and that further litigation will cause

1 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of
2 litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any
3 litigation.

4 Based on their own independent investigations and evaluations, the Parties and their
5 respective counsel are of the opinion that the settlement of the Released Claims on the terms set forth
6 in the Settlement Agreement are fair, reasonable and adequate and is in the best interests of the
7 Parties, the LWDA, and Aggrieved Employees in light of all known facts and circumstances and the
8 risks inherent in litigation.

9 The Parties recognize that this Court may, pursuant to California Labor Code Section
10 2699(e)(2), award a lesser amount than the maximum civil penalty amount permitted under PAGA
11 if, based on the facts and circumstances of the particular case, to do otherwise would result in an
12 award that is unjust, arbitrary and oppressive, or confiscatory.

13 On January 16, 2025, Plaintiff provided a copy of the Settlement Agreement to the LWDA in
14 accordance with Labor Code Section 2699(l)(2).

15 The Settlement Agreement provides that Apex Class Action LLC shall administer the
16 Settlement Agreement in accordance with its terms.

17 In consideration of the terms and conditions set forth in the Settlement Agreement, the Parties
18 agree to be bound to the terms and conditions set forth in the Settlement Agreement, including that:

19 c. Defendants will pay a total of \$47,200 (“Gross Settlement Amount”). The
20 Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA
21 Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the
22 Administrator’s Expenses Payment.

23 d. Within thirty (30) days after the entry of the Court’s Order approving the
24 Settlement Agreement, Defendant shall provide the Settlement Administrator with a list stating each
25 Aggrieved Employee’s (i) first and last name; (ii) last known address; (iii) Social Security number;
26 (iv) start and end dates of employment; and (v) number of Pay Periods.

27 e. Within thirty (30) days after the entry of the Court’s Order approving the
28 Settlement Agreement, Defendant will wire transfer the Gross Settlement Amount into an account

1 for administration and distribution maintained by the Settlement Administrator. The Gross
2 Settlement Amount shall be allocated as follows:

3 i. Attorneys' Fees in an amount equal to one-third of the Gross
4 Settlement Amount, which is Fifteen Thousand, Seven Hundred Thirty-Three Dollars and Zero
5 Cents (\$15,733.00), plus reimbursement of actually incurred and documented litigation expenses of
6 Sixteen Thousand Three Hundred Fourteen Dollars and Forty-Three Cents (\$16,314.43).¹;

7 ii. Settlement Administrator's Fee to Apex Class Action LLC, in the
8 amount of Four Thousand Dollars and Zero Cents (\$4,000.00) for the administration of the
9 Settlement;

10 iii. A LWDA Payment to the California Labor and Workforce
11 Development Agency in the amount of Eight Thousand Three Hundred Sixty-Four Dollars and
12 Forty-Three Cents (\$8,364.43) which represents seventy-five percent (75%) of the Net Settlement
13 Amount (Gross Settlement Amount minus Attorneys' Fees and Costs, and Settlement
14 Administration Costs);

15 iv. Individual PAGA Payments to the Aggrieved Employees in the
16 amount of Two Thousand Seven Hundred Eighty-Eight Dollars and Fourteen Cents (\$2,788.14)
17 which represents twenty-five percent (25%) of the Net Settlement Amount;

18 f. The Individual PAGA Payments will be distributed to each Aggrieved
19 Employee on a *pro rata* basis, calculated according to the number of Pay Periods the Aggrieved
20 Employee worked during the PAGA Period;

21 g. The Settlement Administrator shall distribute the Attorneys' Fees and Costs,
22 Settlement Administration Costs, the Individual PAGA Payments, and the LWDA Payment within
23 seven (7) days after Defendant transfers the full Gross Settlement Amount to the Settlement
24 Administrator;

25
26 ¹ A copy of the Litigation Expenses for Plaintiff's Counsel that documents costs actually incurred are attached
27 to the declaration of Annabel Blanchard, filed concurrently herewith. The Settlement Agreement provides for
28 an amount up to \$16,500.00 for Plaintiff's Counsel's actually incurred and documented litigation expenses.
To the extent the total costs are less than \$16,500.00, or to the extent Court approves a PAGA Counsel Fees
Payment less than the amounts requested, the Agreement contemplates that the Administrator will allocate
the remainder to the Net Settlement Amount.

1 h. The Settlement Administrator shall mail the PAGA Settlement Notice Cover
2 Letter (attached hereto as **Exhibit B**) and Individual PAGA Payment checks (together, the "PAGA
3 Settlement Package") to all Aggrieved Employees by First-Class United States mail, postage
4 prepaid. For each PAGA Settlement Package that is returned undeliverable, the Settlement
5 Administrator shall within seven (7) calendar days attempt to locate an alternative, updated address
6 for the Aggrieved Employee at issue, by using all reasonably available sources and methods (e.g.,
7 National Change of Address database, direct contact by the Settlement Administrator with
8 Aggrieved Employees, skip-trace searches), and shall attempt one (1) re-mailing of the PAGA
9 Settlement Package. The face of each check shall prominently state the date when the check will be
10 voided not less than one hundred and eighty (180) calendar days after the date of mailing, and
11 thereafter shall be canceled by the Settlement Administrator. Funds associated with such canceled
12 checks shall be transmitted by the Settlement Administrator, in compliance with California Code of
13 Civil Procedure §384, to the California State Bar's Justice Gap Fund as the *cy pres* beneficiary;

14 i. The Parties agree that this Court shall retain jurisdiction to enforce the terms
15 of the Settlement Agreement pursuant to California Code of Civil Procedure Section 664.6; and

16 j. The Parties shall bear their own respective costs and attorneys' fees, except as
17 otherwise provided in the Settlement Agreement.

18 Plaintiff represents that the Attorneys' Fees Payment to PAGA counsel is fair and reasonable
19 in light of both the monetary and non-monetary relief obtained through the Settlement Agreement,
20 and the amount of work and time expended by PAGA Counsel in prosecuting this matter.

21 Defendant does not oppose the PAGA Counsel's request for Attorneys' Fees and Costs.

22 The Parties have separately entered into a confidential settlement agreement regarding the
23 non-PAGA, individual claims of Plaintiff against Defendant ("Separate Individual Settlement
24 Agreement"). In this Separate Individual Settlement Agreement, Defendant agreed to pay an
25 individual settlement to Plaintiff for her non-PAGA claims, including claims for alleged
26 discrimination, retaliation, and wrongful termination.

27 ///

28 ///

1 The Parties jointly request that the Court enter an order approving the Settlement Agreement
2 attached hereto as **Exhibit A**, and request that the Court retain jurisdiction to enforce the terms of the
3 Settlement Agreement pursuant to California Code of Civil Procedure Section 664.6.

4
5 Dated: February 13, 2025

BLACKSTONE LAW, A.P.C.

6
7 By: A. Blanchard

8 Barbara DuVan-Clarke
9 Danielle GruppChang
10 P.J. Van Ert
Annabel Blanchard

11 *Attorneys for Plaintiff*
12 Tiffany Patterson

13
14 Dated: February 13, 2025

MARTIN LAW FIRM

15
16 By: /s/ David Martin

17 David Martin, Esq.

18 *Attorneys for Defendant*
19 Black Mountain Healthcare d/b/a Seaport
20 Home Health & Hospice

[PROPOSED] ORDER

The Court, having read and considered the Parties' Joint *ex parte* Application for Order Approving Settlement Pursuant to Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 et seq.) (hereinafter "*Ex Parte* Application") and the attached PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"), and having heard and considered the arguments of counsel, and good cause appearing therefore,

HEREBY ORDERS as follows:

1. The Parties' Settlement Agreement, attached hereto as **Exhibit A**, is **APPROVED**. All capitalized terms used in this order have the same meaning, force and effect as set forth in the Settlement Agreement.

2. The Court finds that PAGA Counsel provided adequate notice to the California Labor and Workforce Development Agency ("LWDA") in accordance with California Labor Code Section 2699(l)(2). On January 16, 2025, PAGA Counsel submitted electronic copies of the Settlement Agreement to the LWDA.

3. PAGA Counsel is ordered to provide the LWDA with an electronic copy of this order within 10 days after the Court's entry of this order.

4. The Court finds and determines that the terms set forth in the Settlement Agreement are fair, reasonable, and adequate and directs the Parties to effectuate the Settlement according to its terms having found that the Settlement was reached as a result of informed and non-collusive arms'-length negotiations facilitated by a neutral mediator. The Court further finds that the Parties conducted extensive investigation, research, and informal discovery and that their attorneys were able to reasonably evaluate their respective positions. The Court also finds that Settlement will enable the Parties to avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the case. The Court has reviewed the monetary recovery provided as part of the Settlement and recognizes the significant value accorded to the State of California and the Aggrieved Employees. "Aggrieved Employees" refers to all current and former non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period, i.e., the period beginning May 9, 2022, up to and including the date upon which

1 the Court enters this Order.

2 5. The Court further finds and determines that all the terms of the Settlement are fair,
3 reasonable and adequate to the State of California and the Aggrieved Employees and that the
4 Settlement is ordered finally approved, and that all terms and provisions of the Settlement
5 Agreement should be and hereby are ordered to be consummated.

6 6. The Court finds and determines that the Individual PAGA Payments to be paid to the
7 Aggrieved Employees as provided for by the Settlement Agreement as their share of civil penalties
8 in this case are fair and reasonable. The Court hereby approves and orders the payment of those
9 amounts be made to the Aggrieved Employees in accordance with the Settlement Agreement.

10 7. The Court finds and determines that the LWDA Payment is fair, reasonable, and
11 appropriate. The Court hereby approves and orders the LWDA Payment be made to the LWDA in
12 accordance with the Settlement Agreement.

13 8. The Court finds and determines that the estimated fees and expenses in administrating
14 the Settlement Agreement by Apex Class Action, LLC in the amount of \$4,000.00 are fair and
15 reasonable. The Court hereby approves and orders that the payment of that amount to Apex Class
16 Action, LLC from the Gross Settlement Amount in accordance with the Settlement.

17 9. Pursuant to the terms of the Settlement Agreement, and the evidence and arguments
18 submitted by PAGA Counsel, the Court approves PAGA Counsel's request for attorneys' fees in in
19 the amount of \$15,733.00. The approved attorneys' fees, which are equal to one-third of the Gross
20 Settlement Amount, are fair, reasonable and appropriate. The Court hereby orders the Settlement
21 Administrator to make this payment to PAGA Counsel from the Gross Settlement Amount in
22 accordance with the terms of the Settlement Agreement.

23 10. Pursuant to the terms of the Settlement Agreement, and evidence and arguments
24 submitted by PAGA Counsel, the Court approves PAGA Counsel's request for reimbursement of
25 actual litigation expenses and costs in the amount of \$16,314.43. The Court finds such amount to be
26 fair and reasonable. The Court hereby orders the Settlement Administrator to make this payment to
27 PAGA Counsel from the Gross Settlement Amount in accordance with the terms of the Settlement
28 Agreement.

1 11. The Court finds and determines that Defendant and its current and former and future
2 owners, officers, directors, members, insurers, reinsurers, shareholders, predecessors, successors,
3 parent companies, subsidiaries, divisions, affiliates, subsidiaries, predecessors, successors, assigns,
4 representatives, affiliates, related companies, licensees, lessors, managers, administrators,
5 employees, consultants, partners, joint venturers, agents, fiduciaries, accountants, and legal
6 representatives (“Released Parties”), by operation of this Order and Judgment, and upon the full
7 funding of the Gross Settlement Amount, are hereby fully, finally, and forever released,
8 relinquished, and discharged from all Released Claims by Plaintiff, the Aggrieved Employees, and
9 the State of California. “Released Claims” means any and all claims, transactions, and occurrences
10 that occurred during the PAGA Period, that were alleged in the PAGA Notice and/or the Operative
11 Complaint, or that reasonably could have been alleged based on the factual allegations in the
12 Operative Complaint and/or PAGA Notice, including any and all claims for civil penalties under the
13 Private Attorneys General Act of 2004, California Labor Code sections 2698 et seq., for Defendant's
14 alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and
15 associated premium payments, timely pay wages during employment and upon termination, provide
16 compliant wage statements, maintain complete and accurate payroll records, and reimburse
17 necessary business-related expenses in violation of California Labor Code sections 201, 202, 203,
18 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the
19 applicable Industrial Welfare Commission Wage Orders.

20 12. Without affecting the finality of this order or the entry of judgment in any way, the
21 Court retains jurisdiction of all matters relating to the interpretation, administration, implementation,
22 effectuation, and enforcement of this order and the Settlement pursuant to California Code of Civil
23 Procedure § 664.6.

24 13. Neither the making of the Settlement Agreement nor the entry into the Settlement
25 Agreement constitutes an admission by Defendant, nor is this Order a finding of the validity of any
26 claims in this action or of any other wrongdoing. Further, the Settlement Agreement is not a
27 concession, and shall not be used as an admission of any wrongdoing, fault, or omission of any entity
28 or persons; nor may any action taken to carry out the terms of the Settlement Agreement be construed

1 as an admission or concession by or against Defendant.

2 14. Nothing in this order shall preclude any action to enforce the Parties' obligations under
3 the Settlement or under this order, including the requirement that Defendant fund the Gross
4 Settlement Amount in accordance with the Settlement.

5 15. Upon completion of administration of the Settlement, the Settlement Administrator
6 will provide a written declaration attesting to such completion to the Court and counsel for the
7 Parties which shall be filed with the Court.

8 16. The Parties will bear their own costs and attorneys' fees except as otherwise provided
9 by this Court's Order and as provided for in the Settlement Agreement.

10 17. Accordingly, the Parties' request for approval of the Settlement Agreement is
11 GRANTED and the corresponding Judgment is hereby entered.

12
13 **IT IS SO ORDERED:**

14
15 DATED: _____, 2025

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18 _____
JUDGE OF THE SUPERIOR COURT
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Exhibit A

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (Settlement Agreement” or “Settlement”) is entered into by and between Tiffany Patterson (“Plaintiff”), individually and as a representative of the State of California and the Aggrieved Employees (as defined in Section 1(b) below), and Black Mountain Healthcare, LLC (“Defendant”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate.

1. Definitions.

(a) “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned *Tiffany Patterson v. Black Mountain Healthcare, LLC, d/b/a Seaport Home Health & Hospice* initiated on August 30, 2023, and pending in Superior Court of San Diego, California, Case No. 37-2023-00037563-CU-OE-CTL.

(b) “Aggrieved Employees” means all current and former non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.

(c) “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s: (i) first and last name; (ii) last known address; (iii) Social Security number; (iv) start and end dates of employment; and (v) number of Pay Periods.

(d) “Aggrieved Employees List” the list of Aggrieved Employee Data that Defendant shall provide the Settlement Administrator.

(e) “Attorneys’ Fees” and “Attorneys’ Litigation Costs and Expenses” (collectively, “Attorneys’ Fees and Costs”) mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

(f) “Court” means the Superior Court of California, County of San Diego.

(g) “Cover Letter” means the letter mailed to each Aggrieved Employee by the Settlement Administrator to give notice of the Settlement.

(h) “Defense Counsel” means David L. Martin and Matthew C. McDonald of Martin Law Firm, PC, counsel for the Defendant.

(i) “Employees’ Portion” means the twenty-five percent (25%) of the Net Settlement Amount that will be distributed to the Aggrieved Employees.

(j) “Gross Settlement Amount” means \$47,200, which is the total amount Defendant agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA Payment, PAGA Attorneys’ Fees, PAGA Attorneys’ Litigation Costs and Expenses, and the Settlement Administration Costs. This Gross Settlement

Amount is the maximum settlement payout that Defendant shall be required to make under the terms of this Settlement Agreement.

(k) “Individual PAGA Payment” means an Aggrieved Employee’s *pro rata* share of the Employees’ Portion, calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period

(l) “Judgment” means the judgment entered by the Court based upon the approval of the Settlement by the Court.

(m) “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

(n) “LWDA Payment” means the Seventy-five percent (75%) of the Net Settlement Amount that will be distributed to the LWDA.

(o) “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Attorneys’ Fees, Attorneys’ Litigation Costs and Expenses, and Settlement Administration Costs. The remainder is to be paid as PAGA civil penalties to the Aggrieved Employees and the LWDA in settlement of PAGA claims.

(p) “Operative Complaint” means Plaintiff’s August 30, 2023, Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Lab. Code §§ 2698, Et Seq. commencing the Action.

(q) “PAGA” means the Private Attorneys General Act (Cal. Labor Code §§ 2689. et seq.).

(r) “PAGA Counsel” means Barbara DuVan-Clarke, Alexander K. Spellman, P.J. Van Ert, and Annabel Blanchard of Blackstone Law, APC, the attorneys representing the Plaintiff individually and as a representative of the State of California and the Aggrieved Employees in the Action.

(s) “PAGA Notice” means Plaintiff’s May 9, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

(t) “PAGA Period” means the period beginning May 9, 2022, up to and including the date upon which the Court enters an order granting approval of the PAGA Settlement.

(u) “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims. The Net Settlement Amount will be the PAGA Penalties Amount.

(v) “PAGA Settlement Package” means the Cover Letter and Individual PAGA Payment checks (together, the “PAGA Settlement Package”) that the Settlement Administrator will mail to all Aggrieved Employees.

(w) “Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

(x) “Plaintiff” means Tiffany Patterson, the named plaintiff in the Action.

(y) “Released Claims” means any and all claims, transactions, and occurrences that occurred during the PAGA Period, that were alleged in the PAGA Notice and/or the Operative Complaint, or that reasonably could have been alleged based on the factual allegations in the Operative Complaint and/or PAGA Notice, including any and all claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders.

(z) “Released Parties” means Defendant and its current and former and future owners, officers, directors, members, insurers, reinsurers, shareholders, predecessors, successors, parent companies, subsidiaries, divisions, affiliates, subsidiaries, predecessors, successors, assigns, representatives, affiliates, related companies, licensees, lessors, managers, administrators, employees, consultants, partners, joint venturers, agents, fiduciaries, accountants, and legal representatives.

(aa) “Settlement Administration Costs” means the amount the Settlement Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Settlement Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

(bb) “Settlement Administrator” means Apex Class Action, LLC, the neutral entity the Parties have agreed to appoint to administer the Settlement.

2. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately January 2022 to November 2023;

(b) On May 9, 2023, Blackstone Law, APC (“PAGA Counsel”), submitted a letter on behalf of Plaintiff to the California Labor and Workforce Development Agency (“LWDA”) and Defendant to notify the LWDA and Defendant pursuant to the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”), of Plaintiff’s intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders, for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses. PAGA Counsel’s submission of this letter on behalf of Plaintiff thereby initiated

LWDA Case Number LWDA-CM-953751-23 (“PAGA Notice”). Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice;

(c) On August 30, 2023, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* (“Operative Complaint”), commencing a representative action under PAGA against Defendant, entitled *Tiffany Patterson v. Black Mountain Healthcare, LLC, d/b/a Seaport Home Health & Hospice*, San Diego County Superior Court Case No. 37-2023-00037563 (“Action”). The Operative Complaint asserts a single cause of action for civil penalties under PAGA for violations of multiple provisions of the California Labor Code and the applicable Industrial Welfare Commission Wage Orders. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged;

(d) On March 7, 2024, the Parties mediated the Action with mediator Kelly Knight. Prior to mediation, Plaintiff obtained, through informal discovery: Plaintiff’s timecards, wage statements, and personnel file; timecards and wage statements for the Aggrieved Employees; Defendant’s corporate policies, including those related to timekeeping, payment of overtime compensation, non-discretionary bonuses, meal and rest periods, and reimbursement of incurred employee expenses; an accounting of employees from the beginning of the PAGA Period to approximately the date of mediation; and an accounting of Pay Periods from the beginning of the PAGA Period to approximately the date of mediation. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval. With the aid of the mediator’s evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety;

(e) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Action and Released Claims.

(f) The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **No Admission of Wrongdoing.** This Agreement represents a compromise and settlement of highly disputed claims. The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind. Nothing in this Agreement is intended or should be construed as an admission by the Released Parties that any of the allegations in the Operative Complaint have merit or that the Released Parties have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant’s defense in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendant’s defenses. The Settlement, this Agreement and Parties’ willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

4. **Consideration.**

(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendant shall pay Forty-Seven Thousand and Two Hundred Dollars (\$47,200) (the “Gross Settlement Amount”) to resolve the Action and Released Claims, which will be paid as follows:

(1) Attorneys’ Fees in the amount of one-third (1/3) of the Gross Settlement Amount, which is Fifteen Thousand Seven Hundred and Thirty-Three Dollars (\$15,733), and reimbursement of Attorneys’ Litigation Costs and Expenses in the amount of up to Sixteen Thousand Five Hundred Dollars (\$16,500) (collectively, “Attorneys’ Fees and Costs”) to PAGA Counsel.

- i. Defendant will not oppose requests for Court approval of these payments provided that they do not exceed these amounts.
- ii. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Attorneys’ Fees payment and the PAGA Attorneys’ Litigation Costs and Expenses payment. If the Court approves a PAGA Attorneys’ Fees payment and/or the PAGA Attorneys’ Litigation Costs and Expenses payment less than the amounts requested, the Settlement Administrator will allocate the remainder to the Net Settlement Amount.
- iii. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff’s Counsel arising from any claim to any portion of the PAGA Attorneys’ Fees payment and/or PAGA Attorneys’ Litigation Costs and Expenses Payment. The Settlement Administrator will pay the PAGA Attorneys’ Fees payment and the PAGA Attorneys’ Litigation Costs and Expenses payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Attorneys’ Fees payment and the PAGA Attorneys’ Litigation Costs and Expenses payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments

(2) Costs and expenses of administration of the Settlement up to the amount of Four Thousand Dollars (\$4,000) (“Settlement Administration Costs”) to Apex Class Action, LLC (“Settlement Administrator”), except for a showing of good cause for additional allotment, and as approved by the Court.

- i. To the extent the Administration Expenses are less, or the Court approves payment less than the amount stated above in section 4(a)(2), the Settlement Administrator will retain the remainder in the Net Settlement Amount.

(3) The amounts stated in Sections 4(a)(1) and 4(a)(2) above (i.e., Attorneys’ Fees and Costs and Settlement Administration Costs), once approved by the Court, shall be paid from the Gross Settlement Amount. The balance remaining after these deductions is referred to as the “Net Settlement Amount.” The Net Settlement Amount is estimated to be Ten Thousand Nine Hundred Sixty-Seven Dollars (\$10,967).

(4) Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA (“LWDA Payment”); it is estimated that the LWDA Payment will total

Eight Thousand Two Hundred Twenty-Five Dollars and Twenty-Five Cents (\$8,225.25). The remaining twenty-five percent (25%) will be distributed to all current and former non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period (“Employees’ Portion”); it is estimated that the amount distributed to the Aggrieved Employees will total Two Thousand Seven Hundred Forty-One Dollars and Seventy-Five Cents (\$2,741.75).

(5) The Aggrieved Employees are estimated to consist of approximately 42 individuals who worked approximately 944 Pay Periods during the PAGA Period. If the actual number of Pay Periods during the PAGA Period is more than ten percent (10%) above the estimated number of 944 Pay Periods (i.e., above 1,038 Pay Periods), the Gross Settlement Amount will be increased proportionally by the same percentage that the actual number of Pay Periods exceeds the 10% buffer.

(b) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One hundred percent (100%) of the payments for Attorneys’ Fees and Costs, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 4(a) above, will be treated and reported for tax purposes as non-wage payments and the Settlement Administrator will be responsible for issuing IRS Forms 1099, as required. Individual PAGA Payments shall be considered one hundred percent (100%) penalties and interest.

5. Approval and Implementation of the PAGA Settlement.

(a) The Parties are aware that some courts have approved a PAGA settlement and entered an order approving the settlement and judgment and thereafter closed the case, while others have approved a PAGA settlement and entered only an order approving the settlement with later instructions to file a request for dismissal of the action. The Parties agree to cooperate and take any and all steps required by the Court in the Action to implement the Settlement and terminate the Action pursuant to settlement (i.e., to terminate the Action by way of judgment or dismissal).

(b) The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 4(a) above. PAGA Counsel will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (a)(i) a draft Joint Stipulation and (ii) Proposed Order Granting Approval of PAGA Settlement; and/or, if required by the Court, (b)(i) a signed declaration from the Settlement Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (ii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section

2699, subd. (1)(2)); and (iii) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Settlement Administrator. Should any declarations be required by the Court, Plaintiff's and PAGA Counsel's declarations shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

(c) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of a Joint Stipulation and Proposed Order to be filed by the Parties. PAGA Counsel is responsible for finalizing and filing the stipulation and proposed order for approval of PAGA Settlement, or, if required by the Court, a motion for approval of PAGA settlement and proposed order thereon, no later than (30) calendar days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. At least three (3) court days before any document necessary for obtaining approval of this Settlement is filed, PAGA Counsel will provide said document(s) to Defense Counsel for Defense Counsel's review and comment. PAGA Counsel is responsible for delivering the Court's approval of the Settlement to the Settlement Administrator.

(d) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant judgment or dismissal of the Action and close the Action based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

6. Payment of the Gross Settlement Amount / Notice to Recipients.

(a) The Parties have jointly selected Apex Class Action, LLC to serve as the Settlement Administrator and verified that, as a condition of appointment, Apex Class Action, LLC agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.

(b) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 4(a) above shall be made by Defendant by transmitting the Gross Settlement Amount to a qualified settlement account established by the Settlement Administrator for administration of this Settlement pursuant to US Treasury Regulations section 468B-1, within thirty (30) calendar days of the Court's order granting approval of this Settlement Agreement.

(c) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked during the PAGA Period ("Pay Periods"), based on Defendant's payroll records. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual PAGA Payment"), the Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of Pay Periods the Aggrieved Employee worked by the total aggregate number of Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this fraction by the Employees' Portion to arrive at each Aggrieved Employee's Individual PAGA Payment.

(1) One hundred percent (100%) of all Individual PAGA Payments are to be considered penalties and the Settlement Administrator will not undertake any deductions, withholding, or remittances for local, state, or federal taxes. Aggrieved Employees' Individual PAGA Payments will be reported on an IRS Form 1099, as required.

(d) The Settlement Administrator shall distribute each Individual PAGA Payment by way of check, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court, in substantially the form attached hereto as "Exhibit A," in the following manner:

(1) No later than thirty (30) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address;; (iii) Social Security number; (iv) start and end dates of employment; and (v) number of Pay Periods (the "Aggrieved Employee Data").

- i. To protect Aggrieved Employee' privacy rights, the Settlement Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Settlement Administrator employees who need access to Aggrieved Employee Data to effect and perform under this Agreement.
- ii. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible.
- iii. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Settlement Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

(2) The Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employees List prior to mailing any checks.

(3) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall mail the agreed-upon Cover Letter and Individual PAGA Payment checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by First-Class United States mail, postage prepaid. The face of each check shall prominently state the date when the check will be voided: not less than one hundred and eighty (180) calendar days after the date of mailing.

- i. For each PAGA Settlement Package which is lost or misplaced and for which an Aggrieved Employee requests a replacement prior to the void date, the Settlement Administrator shall within seven (7) calendar days send a replacement check to any requesting Aggrieved Employee.

- ii. For each PAGA Settlement Package that is returned undeliverable, the Settlement Administrator shall within seven (7) calendar days attempt to locate an alternative, updated address for the Aggrieved Employee at issue, by using all reasonably available sources and methods (e.g., National Change of Address database, direct contact by the Settlement Administrator with Aggrieved Employees, skip-trace searches), and shall attempt one (1) re-mailing of the PAGA Settlement Package.
- iii. The Individual PAGA Payment checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) calendar days, and thereafter, shall be canceled. The Settlement Administrator will cancel all checks not cashed by the void date. Funds associated with such canceled checks shall be transmitted by the Settlement Administrator to the California State Bar's Justice Gap Fund in the name of the Aggrieved Employee(s) at issue and in the amount of their respective Individual PAGA Payment(s).
- iv. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

(4) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall transmit the LWDA Payment to the LWDA.

(5) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall transmit the Attorneys' Fees and Costs to PAGA Counsel. Disbursement of the Attorneys' Fees and Costs to PAGA Counsel shall not precede disbursement of Individual PAGA Payment checks.

(6) No later than seven (7) calendar days after the Settlement Administrator receives the Aggrieved Employees List and Gross Settlement Amount, the Settlement Administrator shall transmit the Settlement Administration Costs to itself.

(7) The Settlement Administrator has a duty to perform or observe all tasks to be performed or observed by the Settlement Administrator contained in this Agreement or otherwise.

7. Release of Claims by Plaintiff, the Aggrieved Employees, and the State of California.

(a) Upon the full funding of the Gross Settlement Amount, Plaintiff and all Aggrieved Employees (including Plaintiff's and each Aggrieved Employee's respective former and present representatives, spouses, agents, attorneys, heirs, successors, executors, administrators, successors, and assigns) and the State of California with respect to the Aggrieved Employees, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged Defendant and its current and former and future owners, officers, directors, members, insurers, reinsurers, shareholders, predecessors, successors, parent companies, subsidiaries, divisions, affiliates, subsidiaries, predecessors, successors, assigns, representatives, affiliates, related companies, licensees, lessors, managers, administrators, employees, consultants,

partners, joint venturers, agents, fiduciaries, accountants, and legal representatives (“Released Parties”) from any and all claims, transactions, and occurrences that occurred during the PAGA Period, that were alleged in the Operative Complaint and/or PAGA Notice, or that reasonably could have been alleged based on the factual allegations in the Operative Complaint and/or PAGA Notice, and including any and all claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders (“Released Claims”).

(b) Separate Non-PAGA Settlement Agreement. The Parties have separately entered into a confidential settlement agreement regarding the non-PAGA claims by Plaintiff against Defendant (“Separate Non-PAGA Settlement Agreement”). In this Separate Non-PAGA Settlement Agreement, Defendant agreed to pay an individual settlement to Plaintiff for her individual non-PAGA claims, including claims of alleged discrimination, retaliation, and wrongful termination. Nothing in this Agreement shall be construed to limit the Parties’ rights under the Separate Non-PAGA Settlement Agreement.

(c) Plaintiff’s Release under this PAGA Settlement Agreement does not extend to those claims covered by the Separate Non-PAGA Settlement Agreement, nor does Plaintiff’s Release extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the PAGA 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. 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.”

(d) PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

(e) Plaintiff and PAGA Counsel represent and warrant that they are not currently aware of any: (a) unalleged claims against Defendant in addition to, or different from, those which are finally and forever settled and released against Defendant by this PAGA Settlement and the Separate Non-PAGA Settlement Agreement; nor are they aware of (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the PAGA Notice, the Operative Complaint,

and this Action. Plaintiff and PAGA Counsel further represent that, other than this Action and Plaintiff's non-PAGA claims, they have no current intention of asserting any other claims against Defendant or its owners, employees, and affiliated companies in any judicial or administrative forum. Plaintiff acknowledges that she was solely employed by Black Mountain Healthcare, LLC. Plaintiff agrees not to proceed on a class basis against Defendant or its owners, employees, or any affiliated entities. Plaintiff and PAGA Counsel represent that they do not currently know of or represent any persons who intend to pursue litigation or seek any recovery against Defendant.

8. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California. Should any non-material provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and said provision cannot be modified to be enforceable, that provision shall immediately become null and void, leaving the remainder of this Settlement Agreement in full force and effect

(b) The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement, pursuant to CCP §664.6, solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Attorneys' Fees payment and PAGA Attorneys' Litigation Costs and Expenses payment, 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, except as to matters that do not affect the amount of the Net Settlement Amount.

(c) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorneys' fees and costs from the non-prevailing Party.

9. **Amendment.** This Settlement Agreement, and all parts of it, may not be modified, altered, changed, or waived except in writing and signed by both Parties' counsel, subject to approval by the Court.

10. **Miscellaneous.**

(a) The Parties agree to stay all proceedings in the Action upon the execution of this Agreement, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

(b) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument.

A signature made on a faxed or electronically transmitted copy of the Settlement Agreement, or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement

(c) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions hereof.

(d) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel under the auspices of mediator Kelly Knight. In the event of vagueness, ambiguity, or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly, and the Parties may present their disputes to the mediator to resolve any vagueness, ambiguity, or uncertainty.

(e) If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. This Settlement Agreement remains in full force and effect anyway.

(f) Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

(g) PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

(h) The Parties and their Counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement, or otherwise seek the assistance of mediator Kelly Knight for resolution. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

(i) The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

(j) Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

(k) This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

(l) To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

(m) Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court.

(n) Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or a state or federal legal holiday, such date or deadline shall be on the first business day thereafter.

(o) All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Jonathan M. Genish
jgenish@blackstonepc.com
Barbara DuVan-Clarke
bdc@blackstonepc.com
Blackstone Law, APC
8383 Wilshire Blvd # 745
Beverly Hills, CA 90211

To Defendant:

David L. Martin
Matthew C. McDonald
Martin Law Firm, PC
2 Park Plaza #620
Irvine, CA 92614
dave@employmentdefenselaw.com
matthew@employmentdefenselaw.com

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFF AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

PLAINTIFF TIFFANY PATTERSON

Dated: 9-13-2024



Tiffany Patterson

**DEFENDANT BLACK MOUNTAIN
HEALTHCARE, LLC**

Dated: _____

Full Name: _____

Title: _____
On behalf of Black Mountain Healthcare,
LLC

BLACKSTONE LAW, APC

Dated: 09/16/2024



Jonathan M. Genish
Barbara DuVan-Clarke
Attorneys for Plaintiff Tiffany Patterson

MARTIN LAW FIRM

Dated: _____

David L. Martin
Matthew C. McDonald
*Attorneys for Defendant Black Mountain
Healthcare, LLC*

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFF AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

PLAINTIFF TIFFANY PATTERSON

Dated: _____

Tiffany Patterson

**DEFENDANT BLACK MOUNTAIN
HEALTHCARE, LLC**

Dated: 9/13/2024

Signed by: _____
00F1D38B850947A...

Full Name: Timothy Johnson

Title: Executive Director
On behalf of Black Mountain Healthcare,
LLC

BLACKSTONE LAW, APC

Dated: _____

Jonathan M. Genish
Barbara DuVan-Clarke
Attorneys for Plaintiff Tiffany Patterson

MARTIN LAW FIRM

Dated: 9/13/2024

Signed by: _____
David L. Martin
881E01AE6E6B403...

David L. Martin
Matthew C. McDonald
*Attorneys for Defendant Black Mountain
Healthcare, LLC*

Exhibit B

Exhibit A

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>><<State>><<Zip>>

Re: Settlement Payment from *Patterson v. Black Mountain Healthcare, LLC*, San Diego County
Superior Court Case No. 37-2023-00037563-CU-OE-CTL

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> (“Individual PAGA Payment”). This check is your payment from the settlement in the lawsuit entitled *Tiffany Patterson v. Black Mountain Healthcare, LLC, d/b/a Seaport Home Health & Hospice*, San Diego County Superior Court Case No. 37-2023-00037563-CU-OE-CTL (“Action”).

The lawsuit was filed on August 30, 2023 by Tiffany Patterson (“Plaintiff”) against her former employer Black Mountain Healthcare, LLC (“Defendant”), on behalf of the State of California, with respect to herself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), for multiple alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, and failure to reimburse business expenses. Prior to initiating the lawsuit, on May 9, 2023, Plaintiff submitted a letter to the California Labor and Workforce Development Agency (“LWDA”), pursuant to PAGA, to provide notice of her intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders, thereby initiating LWDA Case Number LWDA-CM-953751-23 (“PAGA Notice”).

Defendant denies all of Plaintiff’s allegations and denies any wrongdoing of any kind associated with Plaintiff’s allegations. The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses. Instead, the parties agreed to resolve the case, and a settlement was reached between Plaintiff and Defendant.

On <<Date>>, the settlement was approved by the Court. Under California law, when a settlement results in payment of PAGA penalties, seventy-five percent (75%) of the PAGA penalties are paid to the State of California. The remaining twenty-five percent (25%) of the PAGA penalties are paid directly to all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period (“Aggrieved Employees”). The period May 9, 2022 to <> is the “PAGA Period.”

You are receiving a portion of the settlement (the enclosed Individual PAGA Payment) because you have been identified as an Aggrieved Employee on whose behalf this action was brought. Your Individual PAGA Payment is based on the total number of pay periods that you worked for Defendant in California during the PAGA Period. The Individual PAGA Payment is considered to be 100% penalties, which will be reported on an IRS Form 1099 (if applicable). You will receive an IRS 1099 form for the check attributable to your share of the PAGA penalties. You will need to talk to an accountant or other tax professional about any income tax issues related. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of full funding of the Gross Settlement Amount>>, the Released Parties were fully, finally, and forever released, settled, compromised, relinquished, and discharged from the Released Claims.

“Released Parties” means Defendant and its current and former and future owners, officers, directors, members, insurers, reinsurers, shareholders, predecessors, successors, parent companies, subsidiaries, divisions, affiliates, subsidiaries, predecessors, successors, assigns, representatives, affiliates, related companies, licensees, lessors, managers, administrators, employees, consultants, partners, joint venturers, agents, fiduciaries, accountants, and legal representatives.

“Released Claims” means any and all claims, transactions, and occurrences that occurred during the PAGA Period, including all claims that were alleged in the Operative Complaint and/or PAGA Notice, or that reasonably could have been alleged in the PAGA Notice and/or the Operative Complaint, including any and all claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 et seq., for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Orders.

The settlement does not release any individual claims for wages or other kinds of damages or penalties belonging to any employee other than Tiffany Patterson, and you will be releasing your rights to pursue any PAGA claims for the same period of time regardless of whether you cash your settlement check.

The enclosed check is valid for 180 calendar days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 180-day timeframe, it will be canceled, and the funds associated with the canceled check will be transmitted to the California State Bar’s Justice Gap Fund in your name and in the amount of your Individual PAGA Payment. Defendant will not retaliate or take any other negative action against any employee who cashes his or her settlement check

Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant’s counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact [Settlement Administrator] at [toll-free phone number] with any questions. You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.