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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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

**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.

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

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

**DECLARATION OF ANNABEL
BLANCHARD IN SUPPORT OF JOINT *EX
PARTE* APPLICATION AND [PROPOSED]
ORDER APPROVING SETTLEMENT OF
PRIVATE ATTORNEYS GENERAL ACT
CLAIMS AND ENTERING JUDGMENT
THEREON**

Complaint Filed: August 30, 2023
Trial Date: Not Yet Set

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1 4. On August 30, 2023, Plaintiff filed a Complaint in the Superior Court of the State
2 of California for the County of San Diego, entitled *Tiffany Patterson v. Black Mountain*
3 *Healthcare, LLC, d/b/a Seaport Home Health & Hospice.*, Case Number 37-2023-00037563 (the
4 “Operative Complaint”). Plaintiff filed her Operative Complaint on behalf of the State of
5 California and other aggrieved employees as a PAGA action based on violations of California
6 Labor Code §§ 201-203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198,
7 2800, 2802, 2698 *et seq.*, 2699, and all applicable Industrial Welfare Commission (“IWC”) *et seq.*
8 Orders and California Code of Regulations, Title 8, section 11000, *et seq.* The PAGA Notice and
9 the Operative Complaint are referred to collectively as the “Action.”

10 5. Defendant disputes and denies the allegations and claims asserted in Action.

11 6. During the course of the litigation, the Parties engaged in informal discovery and
12 fully shared the information necessary for all sides to conduct a legitimate investigation into the
13 allegations of the action and potential defenses thereto, including randomized payroll and time
14 keeping sampling of the purported Aggrieved Employees along with policies and relevant data
15 points. The Parties have reached this Settlement only after informal discovery and independent
16 investigation was performed.

17 7. On March 7, 2024, the Parties participated in a full-day mediation with mediator
18 Kelly A. Knight. With Mr. Knight’s assistance, the Parties agreed to fully and finally resolve the
19 Action and the PAGA Released Claims as to Plaintiff, the State of California, the LWDA, and
20 the Aggrieved Employees.

21 8. Being fully apprised of the value and strength of the PAGA theories alleged in the
22 Action, counsel for Plaintiff and Defendant successfully negotiated a settlement through arms-
23 length negotiations. The terms and conditions of the settlement are set forth in the Settlement
24 Agreement. The Settlement Agreement resolves all claims asserted in the Action and
25 contemplates that the settlement will be approved, and the Court will enter judgment.

26 9. Counsel for Plaintiff and Counsel for Defendant each respectively considered the
27 fact that the existence of numerous disputes of fact in this case makes the outcome uncertain. In
28

1 the estimation of counsel for the Parties, the delay, inconvenience, distraction, and uncertainty
2 imposed by the further litigation would far outweigh the potential benefits of additional litigation.

3 10. Plaintiff and PAGA Counsel believe that the Settlement is a fair, adequate, and
4 reasonable resolution of this matter. Plaintiff and PAGA Counsel recognize the expense and
5 length of continued proceedings necessary to litigate the matter through trial and any possible
6 appeals and have also considered the uncertainty and risk of the outcome of further litigation,
7 and the difficulties and delays inherent in such litigation based upon the burdens of proof.
8 Plaintiff and PAGA Counsel are also aware of the burdens of proof necessary to establish
9 liability, both generally and in response to Defendant's defenses thereto, and the difficulties in
10 establishing Defendant's liability for, and the right to recover, penalties on behalf of Plaintiff, the
11 State of California, and the other purported aggrieved employees.

12 11. The result achieved in this case, and the monetary recovery provided by this
13 Settlement, are well within the range of an acceptable settlement under the circumstances,
14 especially when compared to the settlement of PAGA claims in other cases. *See, e.g., DCH Auto*
15 *Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833 (May 2017) (approving
16 the amount of \$15,000 out of \$4 million toward settlement of PAGA claims); *Flores v. Dart*
17 *Container Corp.*, No. 2:19-cv-00083 WBS JDP, 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal.
18 Jan. 12, 2021) (approving the amount of \$15,000 out of \$411,000 towards settlement of PAGA
19 claims); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV 16-07337 PSG (FFMx), 2019 U.S.
20 Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25, 2019) (approving the amount of \$10,000 of
21 \$1.1 million toward settlement of PAGA claims); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631
22 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at *3 (C.D. Cal. Apr. 24, 2017) (approving the
23 amount of \$20,000 of \$3 million gross settlement towards settlement of PAGA claims);
24 *Nordstrom Commissions Case*, 186 Cal.App.4th 576, 589 (2010) (finding no abuse of discretion
25 by the trial court in approving a settlement that allocates \$0 toward the settlement of PAGA
26 claims that were at issue in the lawsuit); *Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211 PSG
27 (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal. June 17, 2019) (finding that courts
28

1 approve PAGA settlements that fall within zero to two percent of gross settlement recovery).
2 Here, the value obtained for settlement of the PAGA claims is very significant, and it will be
3 distributed in accordance with and in fulfillment of the objectives of the PAGA statute.

4 12. A crucial factor in evaluating the value of a PAGA-only case is that all PAGA
5 awards are discretionary and can be reduced by the Court.¹ California Labor Code section
6 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if, based on
7 the facts and circumstances, to do otherwise would result in an award that is “unjust, arbitrary
8 and oppressive or confiscatory.” For example, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.
9 App. 5th 504, the Court of Appeals affirmed a judgment after trial that only provided for a PAGA
10 penalty of \$5 per pay period. Given this precedent, there is a risk at trial that any PAGA penalties
11 awarded could be significantly less than Plaintiff’s calculation even where Plaintiff prevailed on
12 the PAGA claim.

13 13. The Settlement is also supported by other PAGA settlements previously approved
14 by other courts. *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case
15 No. JCCP4833 (May 2017) (approving the amount of \$15,000 out of \$4 million toward
16 settlement of PAGA claims); *Flores v. Dart Container Corp.*, No. 2:19-cv-00083 WBS JDP,
17 2021 U.S. Dist. LEXIS 6897, at *3 (E.D. Cal. Jan. 12, 2021) (approving the amount of \$15,000
18 out of \$411,000 towards settlement of PAGA claims); *Dawson v. Hitco Carbon Composites, Inc.*,
19 No. CV 16-07337 PSG (FFMx), 2019 U.S. Dist. LEXIS 226687, at *6-7 (C.D. Cal. Nov. 25,
20 2019) (approving the amount of \$10,000 of \$1.1 million toward settlement of PAGA claims);
21 *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, at
22 *3 (C.D. Cal. Apr. 24, 2017) (approving the amount of \$20,000 of \$3 million gross settlement
23

24 ¹ Under PAGA, courts have considerable discretion to reduce the penalty award. In *Thurman v. Bayshore Transit*
25 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135-1136, the court found no abuse of discretion when the trial
26 court reduced the penalty by 30% based on the facts of the case, ruling that “[t]o do otherwise under the particular
27 facts and circumstances of this case would be unjust, arbitrary, oppressive, and confiscatory.” Some trial courts have
28 actually awarded no civil penalties, even when Labor Code violations are established. *See Makabi v. Gedalia*, 2016
Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los
Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, No. 1:07-cv-01314-
SAB, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

1 towards settlement of PAGA claims); *Nordstrom Commissions Case*, 186 Cal.App.4th 576, 589
2 (2010) (finding no abuse of discretion by the trial court in approving a settlement that allocates
3 \$0 toward the settlement of PAGA claims that were at issue in the lawsuit); *Alcala v. Meyer*
4 *Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal.
5 June 17, 2019) (finding that courts approve PAGA settlements that fall within zero to two percent
6 of gross settlement recovery). Here, the value obtained for settlement of the PAGA claims is
7 reasonable, and it will be distributed in accordance with and in fulfillment of the objectives of
8 the PAGA statute.

9 14. The Parties have separately entered into a confidential settlement agreement
10 regarding Plaintiff's non-PAGA individual claims against Defendant.

11 15. Plaintiff, as a PAGA Representative, has provided extensive supporting
12 documents and assisted PAGA Counsel in developing information necessary to litigate and settle
13 this case. Plaintiff also conducted record review and consultation with PAGA Counsel in
14 preparation for discovery and eventual mediation, and to assist in evaluating and proving the
15 claims.

16 16. As set forth in the Settlement Agreement, the Gross Settlement Amount ("GSA")
17 is \$47,200, and includes an apportionment of attorneys' fees and litigation expenses as well as
18 payment to the Settlement Administrator.

19 17. The Settlement is intended to fully and finally resolve the PAGA claim asserted
20 by Plaintiff on behalf of the State of California and the Aggrieved Employees. After deducting
21 the Attorneys' Fees of \$15,733.00 (one-third of the GSA), actual Litigation Expenses of
22 \$16,314.43, and the Settlement Administration Costs of \$4,000.00 to APEX Class Action LLC
23 (the Settlement Administrator), the remaining Net Settlement Amount ("NSA") is estimated to
24 be \$11,152.57 and will be distributed 75% to the LWDA and 25% to the Aggrieved Employees.
25 An estimated \$2,788.14 (25% of the NSA) will be distributed to the Aggrieved Employees on a
26 *pro rata* basis, based on their Pay Periods worked during the PAGA Period. The remaining
27 \$8,364.43 (75% of the NSA) is to be distributed to the LWDA.

1 18. Based on PAGA Counsel's extensive experience litigating over 200
2 representative actions, PAGA Counsel believes the Settlement here is fair and reasonable and
3 warrants approval by the Court.

4 19. I and my firm have a great deal of experience in PAGA litigation. I have been
5 certified and approved as PAGA counsel in many other PAGA actions, and I am currently
6 litigating numerous others before State courts. I have been working with Jonathan Genish of
7 Blackstone Law, APC, since 2024. Since 2021, I have been committed solely to representing
8 plaintiffs in both individual employment litigation and complex wage and hour representative
9 actions.

10 20. Here, the Parties' agreement to pay Attorneys' Fees of \$15,733.00 (*i.e.*, one-third)
11 of the Gross Settlement Amount is reasonable.

12 21. Our firm as PAGA Counsel, on behalf of Plaintiff and the Aggrieved Employees,
13 invested numerous hours litigating this matter through the date of this declaration and have
14 invested attorney time at a rate that far exceeds the requested fees. The rates charged by my firm
15 are in line with the prevailing rates of attorneys in the local legal community for similar work
16 and, if this were a commercial matter, these are the charges that would be made and presented to
17 the client. The requested fees are reasonable.

18 22. Finally, the award of litigation expenses is based upon the actual expenses
19 incurred by Plaintiff and PAGA Counsel, and were all reasonably necessary to the litigation, and
20 are detailed in **Exhibit C** attached hereto. Under the Agreement, PAGA Counsel is permitted to
21 seek reimbursement of actual litigation costs up to \$16,500.00. Here, PAGA Counsel requests
22 reimbursement of actual litigation costs and expenses in the total amount of \$16,314.43, which
23 is less than the amount allowed by the Settlement Agreement. Any portion of the allocation for
24 litigation expenses and costs not applied as reimbursement for actual expenses and costs to
25 PAGA Counsel will be allocated to the Net Settlement Amount.

26 23. Attached hereto as **Exhibit D** is a true and correct copy of the Settlement
27 Administrator's proposed quote to administer the terms of the Settlement.
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24. The Parties request, in the *Ex Parte* Application for Order Approving Settlement Pursuant to Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 Et Seq.) filed concurrently with this Declaration, that the Court enter the accompanying [Proposed] Order approving the Settlement as permitted by Labor Code section 2699(l), in accordance with the terms and conditions of the Settlement Agreement.

25. Notice of the Settlement has been provided to the LWDA along with a copy of the Settlement Agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 13, 2025, at Los Angeles, California.

A. Blanchard

Annabel Blanchard

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



Tiffany Patterson

Dated: 9-13-2024

**DEFENDANT BLACK MOUNTAIN
HEALTHCARE, LLC**

Dated: _____

Full Name: _____

Title: _____
On behalf of Black Mountain Healthcare,
LLC

BLACKSTONE LAW, APC



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

Dated: 09/16/2024

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: _____
DOF1D38B850947A...

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
681E01AEE68403...

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.

Exhibit C

Date	Type of Expense	Description of Expense	Amount
02/21/2023	Mailing	Mailing Cost: RR to Black Mountain Healthcare DBA Seaport Hospice	\$8.10
02/21/2023	Mailing	Mailing Cost: RR to The Pennant Group	\$8.10
9/5/2023	Filing	LWDA: PAGA Letter Submission	\$75.00
9/5/2023	Mailing	Mailing Cost: PAGA Letter to Black Mountain Healthcare LLC DBA Seaport Hospice	\$8.10
9/5/2023	Mailing	Black Mountain Healthcare LLC	\$8.10
9/5/2023	Mailing	Mailing Cost: PAGA Letter to National Registered Agents of The Pennant Group	\$8.10
9/5/2023	Mailing	Mailing Cost: PAGA Letter to The Pennant Group	\$8.10
9/5/2023	Mailing	Mailing Cost: PAGA Letter to National Registered Agents, Inc of Black Mountain Health	\$8.10
08/31/2023	Filing	Steno: Complaint Packet	\$647.20
1/11/2023	Filing	Steno: Notice and Acknowledgement of Receipt	\$59.95
01/24/2024	Mediation	Check to Judicate West	\$8,375.00
01/24/2024	Mailing	Mailing Cost - Judicate West	\$5.04
6/2/2024	Filing	Steno: Court Reasearch - Copy Job	\$95.00
03/15/2024	Mediation	Check to Berger Consulting Group	\$6,880.00
03/15/2024	Mailing	Mailing Cost to Berger Consulting Group	\$0.64
05/28/2024	Filing	Steno: CMC And Notice Of Settlement	\$59.95
08/29/2024	Filing	Steno: Case Management Statement	\$59.95
Total:			\$16,314.43

Exhibit D

**Quotation Request:**

Annabel Blanchard
Blackstone Law
ablanchard@blackstonepc.com
310.361.0599

Case Name:

Patterson v. Black Mountain/Seaport Hospice

Date:

Tuesday, July 9, 2024

RFP Number:

16293014

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Number of Aggrieved Employees	45
Certified Language Translation:	No
Static Settlement Website	Yes
Percentage of Undeliverable Mail	20%

Professional Services**Fee Calculation****Rate(s)****Quantity****Estimated Cost****Data Analytics and Standardization**

Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$275.00

Project Management

Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	1	\$90.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$530.00

Toll-Free Contact Center, Website, Reporting & Pre-Distribution

Form Set Up	Per Hour	\$120.00	1	\$120.00
Bilingual Toll-Free Contact Center	Static Rate	\$15.00	1	\$15.00
NCOA Address Update (USPS)	Static Rate	\$15.65	1	\$15.65
Settlement Website: Static Apex URL	Static Rate	\$500.00	1	\$500.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
Sub Total:				\$650.65



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Distribution & Settlement Fund Management				
Settlement Calculations	Per Hour	\$120.00	1	\$120.00
Account Management and Reconciliation	Per Hour	\$140.00	1	\$140.00
Print & Mail Distribution Settlement Check (IRS Form 1099 if applicable)	Per Piece	\$1.50	45	\$67.50
USPS First Class Postage	Per Piece	\$0.68	45	\$30.60
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.50	5	\$11.25
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	4	\$400.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$750.00	1	\$750.00
			Sub Total:	\$1,519.35

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	2	\$240.00
			Sub Total:	\$475.00

			WILL NOT EXCEED:	\$3,450.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In the event of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services.** It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this confidentiality may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex.** It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. **Apex may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement.** All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions.** No choice of law or conflict of laws provisions shall affect this governing law provision.

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.