

David L. Cheng (SBN 240926)
dcheng@fordharrison.com
Min K. Kim (SBN 305884)
mkim@fordharrison.com
FORD & HARRISON LLP
350 South Grand Avenue, Suite 2300
Los Angeles, CA 90071
Telephone: (213) 237-2400
Facsimile: (213) 237-2401

Attorneys for Defendants,
INCLUDED HEALTH, INC., formerly known as
Grand Rounds, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

QUINCY O'NEAL, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

v.

INCLUDED HEALTH, INC., a Delaware
corporation; GRAND ROUNDS
HEALTH, a California corporation;
DOCTOR ON DEMAND
PROFESSIONALS OF CALIFORNIA, a
California corporation; and DOES 1
through 25, inclusive,

Defendant.

CASE NO. CGC-23-608391

Assigned to Hon. Andrew Y.S. Cheng, Dept. 613

**SUPPLEMENTAL DECLARATION OF
DAVID CHENG IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

Date: December 26, 2024

Time: 9:00 a.m.

Dept.: 613

Action Filed: August 15, 2023

Trial Date: None Set

DECLARATION OF DAVID CHENG

I, David Cheng, declare as follows:

1. I am an attorney at Ford Harrison LLP and am counsel of record for Defendant Included Health, Inc. (“Defendant”) in this case. I am providing this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement. I have personal knowledge of each of the matters set forth below and, if called as a witness could and would testify competently to each of them under oath.

2. In the Court’s November 8, 2024 Order Continuing Preliminary Approval Hearing and Vacating Case Management Conference, the Court has requested supplemental information and/or discussion regarding Plaintiff’s general release.

3. Under the terms of the settlement agreement, Plaintiff is releasing *all possible claims*, against Defendant, whether known or unknown, which includes a general release and waiver pursuant to California Civil Code section 1542. The Class Members are not affected by the terms of the individual release, which only applies to Plaintiff. Further, Plaintiff’s individual claims were negotiated as part of the parties’ settlement.

4. While it is common for plaintiffs in employment cases to file separate FEHA cases with wage and hour class action, there are very few cases that discuss whether it is acceptable for plaintiffs to resolve claims outside of the class claims, with one Court saying:

“The Court further finds that the Class Representatives are individually releasing claims for the property damage experienced as a result of their Dryer fires (and none of the absent Settlement Class members are providing these releases). The Court notes that, as part of their individual settlements, Plaintiffs will receive the following for individual (non-class) property damage claims: \$25,000 to Shannon Carty; \$7,587.33 to Matthew Downs; and \$1,239.65 to Michelle McGowan. These separate settlement amounts do not render the Class Representatives inadequate or otherwise cause a conflict of interest; rather, the Class Representatives are settling their individual claims and providing releases—above and beyond the Settlement—as part of their own individual property damage claims. The Court finds that this creates no conflict of interest between the Class Representatives and the Class; nor does it creates a conflict between Class Counsel and the Class. *See La Fleur v. Medical Mgmt. Int’l*, No. 13–01960–VAP (OPx), 2014 U.S. Dist. LEXIS 90367, *22, 2014 WL 2967475 (C.D. Cal. June 25, 2014) (incentive payment of \$15,000 to each named plaintiff approved because, *inter alia*, the named plaintiffs released *all* claims against the defendant); *Hillgamy v.*

1 *Reliastar Life Ins. Co.*, No. 11–cv–729, 2013 U.S. Dist. LEXIS 147457, 2013 WL
2 5523989 (W.D.Wis. Oct. 4, 2013) (pursuit and settlement of class representative's
3 individual claim not incompatible with her serving as class representative so long as no
4 class-wide release given).”

5 *Roberts v. Electrolux Home Prod., Inc.*, No. CV13-2339-CAS VBKX, 2014 WL 4568632,
6 at *9 (C.D. Cal. Sept. 11, 2014).

7 5. There is no rule in class action jurisprudence that a plaintiff cannot release both class
8 claims and separate individual claims. As the parties negotiated as part of the settlement, Plaintiff’s
9 release of all claims will provide the certainty to Defendant that there will no longer be further
10 litigation with Plaintiff. *See McConville v. Renzenberger, Inc.*, 2019 WL 9408103, *9 (C.D. Cal.
11 Dec. 2, 2019) (holding that releases that only applied a general section 1542 only to the class
12 representative adequately balances fairness to absent class members and recovery for plaintiff with
13 defendant’s business interest in ending the litigation); *Wright v. Renzenberger, Inc.*, 2019 WL
14 8163480, *5 (C.D. Cal. Nov., 25, 2019) (same); *Bey v. Mosaic Sales Sol. US Op. Co., LLC*, 2019
15 WL 7940584, *11 (C.D. Cal. Jun. 20, 2019); (same); *Galarza v. Kleckner Metals Corp.*, 2019 WL
16 8886020, *9 (C.D. Cal. Feb. 4, 2019) (same); *Bendon v. DTG Oper., Inc.*, 2018 WL 6265059, *10
17 (C.D. Cal. Feb. 27, 2018) (same).

18 6. Furthermore, Class Members are English speaking employees so the Notice of Class
19 Action Settlement does not need to be in any other language besides English.

20 I declare under penalty of perjury under the laws of the United States of America and of the
21 State of California that the foregoing is true and correct.

22 Executed this 25th day of November, 2024 in Los Angeles, California.

23 

24 _____
25 David L. Cheng