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Attorneys for Plaintiff Garin Tanner,
on behalf of himself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

GARIN TANNER, on behalf of himself and
all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

BIG HAIRY DOG INFORMATION
SYSTEMS, a California corporation, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 24CV001500

Assigned to the Hon. Christopher E. Krueger,
Dept. 54

**DECLARATION OF EVAN S. GAINES IN
SUPPORT OF REQUEST FOR
DISMISSAL**

[Filed Concurrently: Request for Dismissal;
Order]

Complaint Filed: January 30, 2024

1 I, Evan S. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am the
3 principal of Gaines Law Corporation, counsel of record for Plaintiff Garin Tanner ("Plaintiff") in this
4 matter. The matters set forth herein are of my own personal knowledge, and if sworn as a witness, I
5 could and would testify competently thereto.

6 2. On January 30, 2024, Plaintiff filed the instant Action seeking penalties on a
7 representative basis, on behalf of himself and all "aggrieved employees," for Big Hairy Dog
8 Information Systems ("Defendant") violations of California Labor Code and the Private Attorneys
9 General Act of 2004 ("PAGA"), codified as § 2698, *et seq.*, by failing to pay all meal and rest period
10 premiums, overtime wages, vacation/pto wages, and sick pay wages due, failing to provide meal and
11 rest periods, or compensation in lieu thereof, failing to issue complete and accurate wage statements,
12 and failing to timely pay all wages due at separation of employment. The alleged violations occurred
13 when Plaintiff worked for Defendant in Sacramento County, California.

14 3. Following conversations with Defendant's counsel, my office has ascertained that
15 Plaintiff's claims are quite individual. Furthermore, liability is disputed. This determination is based
16 on information provided by Defendant's counsel through discussions in this matter.

17 4. The Parties have negotiated a settlement of Plaintiff's individual claims only, and the
18 PAGA representative claims will be dismissed without prejudice, as set forth in the concurrently-filed
19 request for dismissal. Attached hereto as **Exhibit A** is a true and correct redacted copy of the Parties'
20 Confidential Settlement Agreement and General Release of Claims (the "Settlement Agreement").

21 5. The settlement does not contemplate the waiver of any claims by anyone other than
22 Plaintiff and does not provide for the waiver of PAGA representative claims asserted on behalf of any
23 employee or the State, such that there is no allocation of civil penalties in the Settlement.

24 6. No notice is required to be given to the aggrieved employees because no notice of the
25 pending Action was ever given; there has been no publicity of which the Parties are aware; neither
26 Plaintiff nor my office have communicated with any absent aggrieved employees about the Action;
27 there is no other pending action, of which the Parties are aware, brought by any aggrieved employee;
28

1 and the aggrieved employees are not reasonably ascertainable at the present time; consequently, no
2 absent aggrieved employee will suffer prejudice as a result of this dismissal.

3 7. Plaintiff, therefore, requests that the Court enter a dismissal of this action *with*
4 *prejudice* as to Plaintiff's individual claims and *without prejudice* as to the PAGA representative
5 claims, pursuant to the request submitted concurrently herewith.

6 8. Concurrent with the filing of this Request for Dismissal, Plaintiff has submitted the
7 Settlement Agreement to the LWDA in compliance with Labor Code section 2699(1)(2).

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct and was executed on September 19, 2024, at Westlake Village, California.

10
11 
12 EVAN S. GAINES

EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Confidential Settlement Agreement and Release of All Claims (“Agreement”) is entered into by and between Garin Tanner (“Tanner” or “Plaintiff”) and Big Hairy Dog Information Systems (“BHD” or “Defendant”). Tanner and BHD are collectively referred to herein as the “Parties.” Certain disputes, claims and alleged causes of action have existed by and between the Parties and arose out of and are related to Tanner’s employment relationship with BHD.

WHEREAS, on November 22, 2023, Plaintiff filed a notice with the Labor Workforce Development Agency (“LWDA”) of the factual and legal bases for the labor law violations alleged in his complaint;

WHEREAS, on January 29, 2024, Plaintiff filed a Representative Action Complaint in the Superior Court for the State of California for the County of Sacramento, Case No. 24CV001500, (the “Action”), individually, and on behalf of all aggrieved employees, seeking penalties pursuant to Labor Code section 2699(f) for alleged violations of Labor Code sections 201, 202, 226(a), 226.7, 227.3, 246, 510, 512 and 1194, and penalties pursuant to Labor Code section 2699(a) for alleged violations of California Labor Code 226.3 and 558;

WHEREAS, the Parties desire now to settle completely and for all time any and all disputes or differences between them regarding any claims related to Plaintiff’s employment relationship with BHD and the circumstances attendant thereto;

NOW THEREFORE, in consideration of the foregoing, and of the promises and mutual covenants herein contained, the Parties agree as follows:

1. Consideration.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Settlement Payment shall be mailed to the following address:

Gaines Law Corporation
4550 E Thousand Oaks, Blvd, Suite 100
Westlake Village, CA 91362

Within five (5) calendar days upon receipt of settlement payment from BHD, Plaintiff acknowledges and agrees to file a stipulation and supporting declaration seeking to dismiss his Representative Action Complaint (as set forth as the “Action” above) with prejudice as to Plaintiff’s individual claims, including the individual portion of Plaintiff’s PAGA claim, and without prejudice as to the PAGA representative claims.

2. Tax Liability. Plaintiff agrees that he shall be liable for the payment of all federal, state and local taxes which may be due by him as the result of the consideration received in the Settlement Payment described above, and that such Settlement Payment is made for the settlement of disputed claims as set forth herein. Plaintiff represents that he shall pay such taxes at the time and in the amount required by law. Plaintiff understands that Defendant makes no representations regarding tax liability, and Plaintiff agrees fully to defend, indemnify and hold Defendant, and each of its divisions, affiliates, parents, subsidiaries and operating companies, and its respective current and former officers, directors, employees, agents, contractors, attorneys, and affiliates of each of them, harmless from any liability for payment of taxes, penalties, withholding obligations and interest that are required of him by any government agency at any time as the result of the payment of the consideration set forth herein.

3. Sufficiency of Consideration. Plaintiff acknowledges and agrees that the consideration provided by BHD to him pursuant to this Agreement (including but not limited to Paragraph 1) constitutes good and valuable consideration for the general release and the other promises and terms in this Agreement. Plaintiff understands and agrees that he is not eligible for or entitled to any other benefit or consideration from BHD, except as provided in this Agreement. Plaintiff agrees that the amount paid to his attorneys is reasonable and subject to a fee agreement with his attorneys to which BHD is not privy.

4. Release. In exchange for the promises contained in this Agreement, Plaintiff agrees that he releases BHD from the “Released Claims,” as specifically defined below. Plaintiff individually and on behalf of Plaintiff’s successors, assigns, heirs, estates, executors, administrators, agents, representatives, and attorneys, and each of them, voluntarily, irrevocably, and unconditionally releases, acquits, and forever discharges BHD, and any of its present and former parents, subsidiaries, affiliates, officers, directors, trustees, employees, former employees, agents, representatives, attorneys, and insurers, and/or any of its predecessors, successors and assigns, and each of them (collectively with BHD as the “Releasees”), from any and all individual charges, complaints, claims, promises, agreements, controversies, suits, demands, costs, losses, debts, actions, causes of action, damages, judgments, obligations, liabilities, and expenses of whatever kind and character, known or unknown, suspected or unsuspected, including any claims for attorneys’ fees and costs, which Plaintiff now has, owns, holds, or claims to have, own, or hold, or may have had, owned, or held, or may claim to have, own, or hold against the Releasees, or any of them, regarding events that have occurred in connection with or related to Plaintiff’s

employment with BHD or cessation of employment with BHD, or any acts or inactions of the Releasees, including, without limitation, any and all claims that have or could have been asserted in the Action, or through any related claim or Complaint, Cross-Complaint, or Cross-Action of any kind, or any claims under the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974, the Civil Rights Act of 1991, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, as amended, the California Government Code, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, the California Business & Professions Code, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and any amendments to any of these statutes, and any other federal, state or local statute, ordinance, regulation or common law. In the event, any of the claims subject to this paragraph cannot be released, any language purporting to release such claims shall be stricken from the remainder of this paragraph and shall not affect or invalidate the release of any other claim that can be released pursuant to law.

Section 1542 Waiver. Plaintiff voluntarily waives the provisions, rights, and benefits of Section 1542 of the California Civil Code and of any law, regulation or provision of any code of civil procedure of any other jurisdiction which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides as follows:

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.

Plaintiff warrants that he has read and understands the aforesaid language and acknowledges that he is waiving claims both known and unknown. He further warrants that he has had the opportunity to consult with counsel regarding its meaning and effect and that he voluntarily waives its provisions, rights, and benefits and those of any other law, regulation or provision of any code of civil procedure of like effect.

Medicare Release. It is understood and agreed that Plaintiff accepts full responsibility for discharging any and all liens, including any liens by Medi-Cal or MediCare, or any other governmental entities, or any other healthcare providers that have cared for Plaintiff, or any liens by any insurers or other entities that have paid for such care, or any prior attorneys of Plaintiff, and also including any other liens that may exist or which may be filed in the future and will defend, indemnify and hold harmless Defendant and Releasees from any claims by any existing or future lienholders. Plaintiff further understands and agrees to the language of **Exhibit A, Addendum to Release Of All Claims**, which is incorporated by reference as if set forth in full herein, and understands and agrees that this Agreement is not effective or enforceable if Exhibit A is not executed and notarized and/or executed in the presence of a competent witness.

Warranty of Medicare Ineligibility. Plaintiff hereby warrants and represents that he has never received, is not currently receiving, and did not apply to receive Medicare or Medicaid for any injuries released by this Agreement. Plaintiff further warrants that he is not eligible for benefits under the Federal Medicare program and does not anticipate applying for Medicare or Medicaid benefits.

Indemnification. Plaintiff represents that there are no liens or reimbursement rights by Medicare or Medicaid enforceable against the proceeds of the Settlement Payment, or the persons, firms or corporations making the payment herein. If such a lien or reimbursement right is asserted against the proceeds herein or against Defendant and Releasees or any person, firm or corporation making payment herein, then, in consideration of the payment made to Plaintiff, he agrees to indemnify Defendant and Releasees, their attorneys and/or their insurers against lien claims and/or fines or penalties imposed by Medicare or their agents. Plaintiff agrees to pay and satisfy such asserted lien or reimbursement right, fines and/or penalties or to satisfy the same.

Medicare Confirmation

Definitions:

“Conditional Payments” shall have the meaning ascribed to it under the MSP Statute and implementing regulations.

“MMSEA” means the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), which, in part, amended the Medicare Secondary Payer statute at 42 U.S.C. § 1395y (b) (7) and (8). This portion of MMSEA is referred to herein as “Section 111 of MMSEA”.

“MSP Statute” means the Medicare Secondary Payer (“MSP”) statute. 42 U.S.C. § 1395y (b).

Plaintiff represents that he is not enrolled in the Medicare/Medicaid program and was not enrolled during his employment with Defendant or anytime thereafter through the date of this Agreement.

Plaintiff represents and warrants that the information provided to Defendant and Releasees for confirmation of Defendant’s Medicare/Medicaid status, including his name, gender, date of birth and Social Security Number, are complete, accurate and current as of the date of this Agreement.

Plaintiff represents and warrants that no Medicare/Medicaid payments have been made to or on behalf of Plaintiff and that no liens, claims, demands, subrogated interests or causes of action of any nature or character exist or have been asserted arising from or related to any released claims. Plaintiff further agrees that Plaintiff, and not Defendant and Releasees, shall be responsible for satisfying all such liens, claims, demands, subrogated interests or causes of action that may exist or have been asserted or that may in the future exist or be asserted with respect to the released claims.

Plaintiff agrees to indemnify and hold harmless Defendant and Releasees from any and all claims, demands, liens, subrogated interests and causes of action of any nature or character that have been

or may in the future be asserted by Medicare/Medicaid and/or persons or entities acting on behalf of Medicare/Medicaid, or any other person or entity, arising from or related to this Agreement, the payment of the Settlement Amount, any Conditional Payments made by Medicare/Medicaid, or any medical expenses or payments arising from or related to any released claims that are subject to this Agreement or the release set forth herein, including, but not limited to: (a) all claims and demands for reimbursement of Conditional Payments or for damages or double damages based upon any failure to reimburse Medicare/Medicaid for Conditional Payments; (b) all claims and demands for penalties based upon any failure to report, late reporting or other noncompliance with or violation of Section 111 of MMSEA that is based, in whole or in part, upon late, inaccurate or inadequate information provided to Defendant and Releasees by Plaintiff or his counsel or upon any failure of Plaintiff or his counsel to provide information; and (c) all Medicare/Medicaid liens. This indemnification obligation includes all damages, double damages, fines, penalties, attorneys' fees, costs, interest, expenses and judgments incurred by or on behalf of Defendant and Releasees in connection with such claims, demands, subrogated interests or causes of action.

5. Confidentiality and Non-Disclosure. Plaintiff agrees that he will not without compulsion of legal process, disclose to any third party any of the terms of this Agreement, including the amounts referred to herein, except that he may disclose such information to his spouse, accountants or other professional advisors to whom disclosure is necessary, and to the Sacramento County Superior Court in connection with the dismissal of this Action if the court requires such disclosure. Plaintiff agrees that, in connection with any disclosure permitted hereunder, he shall cause such third party to whom disclosure has been made to agree to comply with this covenant of confidentiality and non-disclosure and, in the event such third party breaches this covenant of confidentiality and non-disclosure, such breach shall be deemed to have been committed by Plaintiff. If asked, Plaintiff will respond to requests for information regarding the terms of this Agreement or the matters referenced herein by stating only that "the matter has been resolved and the resolution is confidential." Plaintiff shall not publish or communicate to any person or entity, or direct or assist others to publish or communicate, including on any social media or internet platforms, to any person or entity, any remarks, comments or other "posts" on any internet platform and/or social media including but not limited to Facebook, snapchat, Instagram, YouTube or other platform concerning Releasees, the Action or the settlement thereof.

Any breach by Plaintiff of Paragraph 5 shall be considered a material breach of this Agreement and the Parties acknowledge that BHD deems confidentiality a material condition of this Agreement, absent which it would not have agreed to the terms set forth herein. Nothing in this paragraph or in any other provision of this Agreement shall, or is intended to, limit any other rights or remedies the Parties may have by virtue of this Agreement or otherwise, including the provisions contained in this Agreement relating to injunctive relief and attorneys' fees and costs.

The Parties agree that a breach of this confidentiality paragraph would constitute irreparable harm to BHD and that, in the event of any breach of this paragraph, BHD may obtain an injunction prohibiting future breaches. In addition, the Parties agree that any breach of confidentiality as defined in Paragraph 5, and any breach of the provision referenced in Paragraph 6(b) of this Agreement, shall result in liquidated damages paid by Plaintiff to BHD in the amount of One Thousand Dollars (\$1,000) per proven breach. In addition, any breach of the provision referenced in Paragraph 6(c) of this Agreement, shall result in liquidated damages paid by BHD

to Plaintiff in the amount of One Thousand Dollars (\$1,000) per proven breach. The Parties agree that injunctive relief, additional monetary damages and reasonable attorneys' fees and costs are also available under this Agreement for enforcing these provisions.

6. Non- Disparagement.

- (a) Nothing in this paragraph shall prevent Plaintiff or Defendant from testifying truthfully in response to a question posed to them during the course of a deposition, trial, or arbitration, even if the response is negative, detracting, or unfavorable.
- (b) Plaintiff agrees and promises he will not undertake any harassing or disparaging conduct directed at Defendant and/or any of its managers, supervisors, or employees, and that Plaintiff will refrain from making any negative, detracting, derogatory, or unfavorable statements about Defendant or any of its managers, supervisors, or employees. Plaintiff further agrees he will not defame or disparage Defendant and shall not say or do anything that damages or impairs in any way the business organization, goodwill, and/or reputation of Defendant (including Defendant's current and former employees). Plaintiff also shall not publish or communicate to any person or entity, or direct or assist others to publish or communicate, including on any social media or internet platforms, to any person or entity, disparaging remarks, comments, or statements concerning Releasees.
- (c) [REDACTED] agree that they will not defame or disparage Plaintiff and shall not say or do anything that damages or impairs in any way his reputation.
- (d) Any breach of this Paragraph by any of the Parties shall be considered a material breach of this Agreement, and each of the Parties acknowledges that non-disparagement is a material condition of this Agreement, absent which they would not have agreed to the terms set forth herein.

7. Agreement Not to Disclose Information or Documents. Plaintiff agrees not to disclose, produce, discuss or make available in any manner to any individual or entity any documents, pleadings, discovery, emails or correspondence, witness statements or information relating to this Action, Plaintiff's lawsuit or this Agreement absent a Court Order to do so. Plaintiff agrees to notify Defendant in the event that any outside entity attempts to subpoena any of the documents relating to this case.

8. Agreement Not to Seek Future Employment with Defendant. Plaintiff agrees that he will not seek employment for any position in the future with Defendant, or its companies, firms, subsidiaries, divisions, joint venturers, affiliates or related entities. In the event Plaintiff does apply to a position covered by this Paragraph, Defendant and Releasees are entitled to reject, with or without cause, any application for employment made by Plaintiff. Plaintiff will not be forced to resign from any company or entity for any reason related to the terms, conditions, claims or releases in this Agreement.

9. Neutral Reference. Defendant's response to any inquiry by a third party regarding Plaintiff will be limited to the dates of Plaintiff's employment and job title.

10. Attorneys' Fees. The Parties to this Agreement shall bear their own attorneys' fees and costs arising from the actions of their own counsel in connection with this Agreement, the matters and documents referred to herein, including the Action and all related matters. In the event that any Party shall institute any action or proceeding against another Party to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover their expenses, including reasonable attorneys' fees, in addition to any other relief to which the Party is found entitled.

11. Voluntary and Informed Execution. Plaintiff represents that: he has relied upon the advice of his attorney, who is the attorney of his own choice, concerning the legal and tax consequences of this Agreement; the terms of this Agreement have been completely read and explained to him by his attorneys; the terms of this Agreement are fully understood and voluntarily accepted by him; he knowingly and voluntarily intends to be legally bound by the same; and he is releasing BHD and Releasees from any and all claims he may have against them.

12. Warranty of Capacity to Execute Agreement. Plaintiff represents and warrants that: (1) no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Agreement, except as otherwise set forth herein; (2) Plaintiff has the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and (3) Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement to any other person or entity.

13. Entire Agreement. The Parties understand and agree that this Agreement constitutes the entire Agreement between the Parties concerning the scope of the settlement of the Action and the related release of claims and that this Agreement supersedes any and all prior oral or written agreements and understandings on such issues. No warranty, representation, condition, understanding or agreement of any kind with respect to the subject hereof shall be relied upon by the Parties unless incorporated herein.

14. Covenant Not to Sue. Except for the obligations created by this Agreement, Plaintiff agrees that he will not, at any time hereafter, commence, maintain or prosecute any action at law or otherwise, or assert any claim against Defendant or Releasees and/or execute or enforce any judgment against Defendant and Releasees for damages or losses of any kind or amount arising directly or indirectly from events that have occurred in connection with or related to his employment with Defendant or the cessation of his employment, or any acts of Defendant and Releasees, including, without limitation, any and all claims that have or could have been asserted in the Action, any claims that in any way relate to the facts alleged in the Action, or any claims that could have been brought under the acts, statutes or common law referenced in Paragraph 4, without repercussion or recourse. Plaintiff further agrees that he will not voluntarily cooperate in any investigation or prosecution of any claim or action against Defendant or Releasees by any person, or current, future or former employee of Defendant or Releasees.

15. Governing Law. This Agreement shall be governed by and conformed in accordance with the laws of the State of California.

16. Non-Admission. This Agreement, and compliance with this Agreement, shall not be construed as an admission of liability on the part of any Party. Such liability being expressly denied, the Parties' intent in this Agreement is to avoid litigation.

17. Agreement Drafted by Both Parties. This Agreement was drafted by Plaintiff and Defendant. The Agreement shall not be construed or interpreted against one party as the drafting party.

18. Modifications. This Agreement may be changed only by an agreement in writing signed by Plaintiff and Defendant.

19. Interpretation of Agreement. Whenever the context requires, any gender referenced includes the other, and the singular number includes the plural, and vice-versa

Any captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of their terms.

No inference, assumption or presumption shall be drawn from the fact that a Party or his or its attorney prepared and/or drafted this Agreement.

Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms or provisions shall not be affected, and the illegal, unenforceable or invalid part, term or provision shall be deemed not part of this Agreement.

20. Enforcement/Subsequent Litigation. If necessary, any of the Parties may bring suit in the California state courts located within Sacramento County to enforce the rights and obligations contained in this Agreement.

21. Use of Evidence. The Parties agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the parties allege a breach of this Agreement or as a defense to any claim, administrative action, and/or lawsuit brought by any party. Other than these exceptions, the Parties agree that this Agreement will not be introduced as evidence in any proceeding or in any lawsuit, unless required by the Sacramento County Superior Court in connection with the dismissal of this Action.

22. Counterparts. This Agreement may be executed in counterparts, each of which may be comprised of original signatures, or copies or facsimiles thereof, but all of which shall, taken together, constitute the same Agreement and, in pleading or proving any provision of the Agreement, it shall not be necessary to produce more than one such counterpart.

23. Severability. Should any provision of this Agreement be declared, or be determined by any court of competent jurisdiction, to be illegal, invalid, or unenforceable, it shall be limited

to the minimum extent necessary to render it enforceable. If it cannot be so limited, it will be severed, and the legality, validity, or enforceability of the remaining parts, terms, or provisions shall not be affected, and the illegal, unenforceable, or invalid part, term, or provision shall be deemed not part of this Agreement.

IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Confidential Settlement Agreement and Release of All Claims as of the date set forth below.

GARIN TANNER

Dated: 08 / 28 / 2024

By 
Garin Tanner

BIG HAIRY DOG INFORMATION SYSTEMS

Dated: AUG. 28, 2024

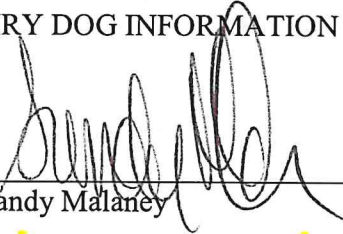
By 
Sandy Malaney

Exhibit A: ADDENDUM TO RELEASE OF ALL CLAIMS
(No Known Medicare or Medicare Advantage Organization Involvement)

I, Garin Tanner (hereinafter also referred to as "I" or "Plaintiff"), individually and on behalf of my heirs, executors, administrators and assigns, as further consideration for the settlement referenced in the RELEASE OF ALL CLAIMS, further recite, warrant, and agree to the following:

DISCLOSURES, WARRANTIES AND INDEMNITY AGREEMENT

I. Recitations and Disclosures

It is not the intention of any party to this settlement to shift to Medicare responsibility for payment of medical expenses for the treatment of injuries sustained as a result of the Incident.¹ However, this Addendum is intended to accompany and supplement the Settlement Agreement with the intention of foreclosing the Released Parties and Scottsdale Insurance Company from any responsibility for future payments of any medical expenses and prescription expenses related to that Incident beyond the payments made under the Settlement Agreement. Scottsdale Insurance Company is herein referred to as "the Carrier."

I understand that 42 USC 1395y(b)(2)(A)(ii) precludes the Centers for Medicare and Medicaid Services (CMS) from paying for services also covered by a liability insurance policy to the extent that payment has been made or can reasonably be expected to be made promptly under that liability insurance policy. 42 CFR 411.50 defines liability insurance. Anytime a Medicare beneficiary receives funds from a liability insurance policy due to a settlement, judgment or award arising out of an accident that requires the beneficiary to receive medical treatment, Medicare expects that those funds will be used to pay for services already rendered and services provided in the future related to that medical treatment. Thus, Medicare should not be billed for future services until those funds are exhausted by payments to providers that would otherwise be covered by Medicare.

I further understand that 42 USC 1395w-21 through 42 USC 1395w-28 authorizes CMS to contract with private insurance companies to administer a Medicare Advantage Plan (MAP). These private insurance companies, operating as Medicare Advantage Organizations (MAO), cover Medicare benefits under what is known as Medicare Part C Coverage. For the purposes of this addendum, the term "Medicare" also includes and encompasses MAPs and MAOs.

CMS and/or the MAO may be entitled to seek reimbursement from a primary plan or other entity/individual receiving the primary plan's payment under 42 USC 1395y(b). By receiving this settlement, I and my counsel, if represented, understand that I/we may have continuing obligations to CMS and/or the MAO, as the Released Parties have included in their payment to me any obligations they have as a PRIMARY PAYER to CMS and/or the MAO. In the event that I do not fulfill my obligations to CMS and/or the MAO, I understand that I or my counsel, if represented, may be subject to a direct suit by CMS and/or the MAO:

¹ The Incident is defined as the damages Plaintiff alleges to have sustained in this Action.

- 1.) For recovery of attorneys fees collected through a settlement or release (42 CFR 411.24(g) and 42 CFR 422.108(f)).
- 2.) For recovery of medical expenses that should have been paid from the settlement (42 CFR 411.24(g) and 42 CFR 422.108(f) and Subrogation 42 CFR 411.26(a)).

I understand and agree that I am aware that, in 2007, the Medicare, Medicaid and SCHIP Extension Act (hereinafter "**Extension Act**") was passed and was enacted, in part, to protect Medicare when the settlement of a bodily injury claim involves the release of all future claims and the alleged injured individual is either a current Medicare beneficiary or has the potential to be entitled to Medicare benefits within thirty (30) months of the date of settlement. Furthermore, I understand that this Act requires the Carrier to report all such settlements within a time established by the Secretary of Health and Human Services.

I understand that, if Medicare is not protected as set forth in the Extension Act, Medicare **may cease all benefits** otherwise available to me. I further understand and agree that, in the event Medicare seeks reimbursement for past or future payments, **the Indemnity Agreement provides that I will indemnify the Released Parties, referenced in the accompanying Release, as well as the Carrier, from all responsibility for Medicare's claim.**

The Released Parties and the Carrier expressly deny all liability for any damages as a result of the Incident and dispute the reasonableness and necessity of past and future medical treatment and expenses allegedly incurred as a result of said Incident.

II. Warranties

Therefore, in consideration of the parties' willingness to settle the claim referenced in the RELEASE OF ALL CLAIMS, and to induce said settlement, Plaintiff makes the following warranties:

- Medicare has made NO CONDITIONAL PAYMENTS for any medical expense or prescription expense related to the Incident.
- I am not, nor have I ever been a Medicare beneficiary.
- I am not currently receiving Social Security Disability Benefits.
- I have not been denied Social Security Disability Benefits.
- I have not appealed from a Denial of Social Security Disability Benefits.
- I am not in End Stage Renal failure.
- I do not expect to become eligible for Medicare benefits within the next 30 months.
- No liens, including but not limited to liens for medical treatment by hospitals, physicians, or medical providers of any kind have been filed for the treatment of injuries sustained in the Incident.

III. Hold Harmless and Indemnity Agreement

Additionally, as further consideration of the parties' willingness to settle the claim referenced in the RELEASE OF ALL CLAIMS, and to induce said settlement, Plaintiff agrees

by and on behalf of myself and my heirs, executors, administrators, and assigns, that I will hold harmless and indemnify each and every released party, and the Carrier, including all of their subsidiaries, affiliates, parent companies, divisions, contractors, employees, servants, agents, officers, directors and legal representatives, and hold free and harmless from and against any and all losses, claims, demands, cause or causes of action or judgments of every kind and character, which may or could be brought for attorneys' fees, contribution or indemnity, any and all statutory contractual or common law subrogation claims or liens, as related to Hospital liens, workers' compensation subrogation liens, **Medicare** or Medicaid liens, Medicare Advantage Organization liens, Social Security disability liens, health insurance liens, and **Federal**, State or local governmental liens.

I am of sound mind and body and fully capable of reading and understanding this agreement. I understand the consequences of my failure to abide by the Extension Act.

Done at Sacramento County, on 08 / 28 / 2024



Garin Tanner

Plaintiff's signature on this Exhibit A is witnessed by:

Evan S. Gaines, Esq.

Print Name


Signature

8/26/24

Date

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, CA 91362.

4 On September 19, 2024, I served the foregoing document described as **DECLARATION OF EVAN S.**
5 **GAINES IN SUPPORT OF REQUEST FOR DISMISSAL** on the interested parties in this action by placing a true
6 copy thereof enclosed in sealed envelopes addressed as follows:

7 **Leslie H. Joyner, Esq.**
8 **Emilie MacLean, Esq.**
9 **GORDON REES SCULLY MANSUKHANI**
10 **633 West Fifth Street, 52nd Floor**
11 **Los Angeles, CA 90071**

12 _____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
13 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
14 and processing correspondence for mailing. It is deposited with United States postal service on that same
15 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
16 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
17 mailing in affidavit.

18 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
19 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an
20 authorized carrier or driver authorized by the express carrier to receive documents.

21 X (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission
22 via email pursuant to an agreement between counsel on the counsel of record listed above.

23 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor
24 & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov)
25 in accordance with the procedure imposed by the LWDA.

26 I certify that the above document was printed on recycled paper.

27 I declare under penalty of perjury that the foregoing is true and correct.

28 Executed on September 19, 2024, at Westlake Village, California.

29 
30 _____
31 EVAN S. GAINES