

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) of claims brought under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, is made and entered into between Plaintiffs Patricia Cuellar and Michelle Lee, acting in their capacity as private attorneys general, and Defendants Aveanna Healthcare AS, LLC and Premier Healthcare Services, LLC.

I. DEFINITIONS

The following terms, when used in this Settlement, will have the following meanings:

1. “Action” means the lawsuit entitled *Patricia Cuellar v. Aveanna Healthcare AS, LLC*, Ventura County Superior Court, Case No. 56-2021-00556492.

2. “Aggrieved Employees” means all current or former non-exempt employees who worked for Defendants as a Home Health Aid, Registered Nurse, Licensed Practical Nurse, Licensed Nurse, Licensed Vocational Nurse, Wellness Immunization Nurse, Clinical Research Nurse, or in an administrative position, in the State of California from May 18, 2020 to the date that the Court enters an order approving this Settlement.

3. “Defendants” means Aveanna Healthcare AS, LLC and Premier Healthcare Services, LLC.

4. “Court” means the Superior Court of California for the County of Ventura.

5. “Effective Date” means the date on which all of the following have occurred: (i) the Court has entered a Final Judgment approving this Settlement; (ii) Plaintiffs’ counsels have executed and returned a Waiver of Appeal rights; and (iii) the time to appeal or seek permission to appeal or seek other judicial review of the Final Judgment approving the Settlement has expired with no appeal or other judicial review having been taken or sought.

6. “Individual Settlement Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

7. “LWDA” means the California Labor and Workforce Development Agency.

8. “Maximum Settlement Amount” is the non-reversionary sum of \$1,200,000.00, which includes payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs’ attorney’s fees and costs, payment of Plaintiffs’ enhancement awards, and payment to the Settlement Administrator for administration costs.

9. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Court approval) are deducted from the Maximum Settlement Amount: (a) Plaintiffs’ attorneys’ fees of up to one-third of the Maximum Settlement Amount, or \$400,000.00; (b) Plaintiffs’ reasonable verified litigation costs in an amount not to exceed \$35,000.00; (c) Plaintiffs’ representative enhancement awards of \$5,000.00 each; and (d) reasonable third-party administration costs up to \$19,985.00.

10. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

11. “PAGA Period” means the time period from May 18, 2020 to the date that the Court enters an order approving this Settlement.

12. “PAGA Released Claims” means all claims for civil penalties pursuant to PAGA, that were pled or could have been pled based on the factual allegations in the anticipated operative First Amended Complaint filed in the Action, including specifically, claims for PAGA penalties arising out of or based on alleged: failure to pay minimum wages, failure to pay overtime wages, failure to pay sick leave at the regular rate of pay, failure to provide compliant meal periods, failure to provide compliant rest periods, failure to provide timely wages, failure to provide timely wages upon separation, failure to provide accurate itemized wage statements, failure to maintain accurate payroll records, failure to reimburse necessary business expenses. This release includes all claims for civil penalties arising under the California Labor Code, including but not limited to Labor Code sections 96, 98, 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 432, 510, 512, 558, 1102.5, 1174, 1174(3), 1174.5, 1194, 1197, 1197.1, 1197.14, 1197.5, 1198, 1198.5, 1199, 2802, 2804, 2810.5, and the applicable Wage Orders of the Industrial Welfare Commission.

13. “Parties” means Plaintiffs and Defendants.

14. “Plaintiffs” means Patricia Cuellar and Michelle Lee.

15. “Plaintiffs’ Counsel” means Haines Law Group, APC, Zakay Law Group, APC, and JCL Law Firm, APC.

16. “Settlement Administrator” means ILYM Group, Inc.

II. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Filing of Amended Complaint.** As a material term of this Settlement, prior to seeking Court approval of this Settlement, the Parties will stipulate to amend the operative Complaint in the Action to add Premier Healthcare Services, LLC as a named Defendant, Michelle Lee as a named Plaintiff, and to plead additional factual allegations in conformance with the PAGA Released Claims. The specific language of the amended complaint shall be mutually agreed upon by the Parties. Following entry of an Order approving this Settlement, Plaintiffs shall seek dismissal of the lawsuit entitled *Michelle Lee v. Aveanna Healthcare AS, LLC, et al.*, Santa Clara Superior Court, Case No.: 21CV387081 with prejudice.

2. **Non-Admission of Liability.** Nothing in this Settlement will be construed to be an admission by Defendants of any liability or wrongdoing as to Plaintiffs, Aggrieved Employees, or any other person, and Defendants specifically disclaim any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not, and may not be, cited or admitted as evidence of liability.

3. **Maximum Settlement Amount.** Defendants will pay \$1,200,000.00 as the non-reversionary Maximum Settlement Amount. The Maximum Settlement Amount will be deposited with the Settlement Administrator no later than 30 calendar days after the Effective Date.

4. **Representation as to Number of Pay Periods.** Defendants represent that the Aggrieved Employees have worked a total of no greater than 250,000 total pay periods during the PAGA Period (“Affected Pay Periods”). If the actual number of Affected Pay Periods is more than 5% greater than this number (i.e., if there are 262,501 or more Affected Pay Periods), Plaintiffs may exercise the option to withdraw from this Settlement by communicating that decision to Defendants’ counsel and the Settlement Administrator in writing at any point prior to the mailing of notice to the Aggrieved Employees. If Plaintiffs elect to exercise this option, this Settlement shall be entirely void. However, the Parties may also agree to modify the terms of the Settlement based on the changed facts.

5. **Net Settlement Amount.** The Parties agree that the following amounts should be deducted from the Maximum Settlement Amount, subject to Court approval, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

- a. **Plaintiff’s Attorney’s Fees and Costs.** Defendants will not oppose Plaintiff’s request for attorneys’ fees in the amount of up to one-third of the Maximum Settlement Amount (\$400,000.00) and actual costs incurred in prosecuting this Action, up to \$35,000.00 as supported by declaration. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on an IRS Form 1099-MISC issued to Plaintiff’s Counsel.
- b. **Plaintiffs’ Enhancement Awards.** Defendants will not oppose Plaintiffs’ request for enhancement awards in the amount of \$5,000.00 each for their service to the State of California and the Aggrieved Employees. In the event the Court approves payments of less than the requested amounts, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report these payments on IRS Forms 1099-MISC issued to Plaintiffs.
- c. **Administration Costs.** Defendants will not oppose the Settlement Administrator’s costs in the amount up to \$19,985.00 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. The Settlement Administrator will report this payment on an IRS Form 1099-MISC issued to the Settlement Administrator.

6. **Allocation of Net Settlement Amount.** The Net Settlement Amount will be distributed 75% to the LWDA and 25% to the Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees will be allocated to the Aggrieved Employees as follows: Individual Settlement Payments will be calculated based on the proportionate number of pay periods worked by each Aggrieved Employee during the PAGA Period, by multiplying the 25% portion of the Net Settlement Amount by a fraction, the numerator of which is each Aggrieved Employee’s total pay periods worked during the PAGA Period, and the denominator of which is the total aggregate number of pay periods worked by all Aggrieved Employees during the PAGA Period.

7. **PAGA Released Claims.** In consideration for the payments awarded pursuant to the terms of this Settlement, Plaintiffs, in their capacity as private attorneys general, acting on behalf of themselves, the State of California, and the Aggrieved Employees, agree that upon the funding of the Maximum Settlement Amount, Plaintiffs, the State of California, the LWDA, and the Aggrieved Employees will fully and finally release Defendants and all of their parent, subsidiary, affiliated and related companies and entities, as well as its/their officers, directors, investors, owners, shareholders, employees, partners, members, agents, and attorneys, and any entities or partnerships with which they are affiliated, past or present from any and all liability for the PAGA Released Claims.

8. **Judgment.** As part of the Motion to approve the Settlement, Plaintiffs will submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement pursuant to Cal. Code Civ. Proc. § 664.6. This Settlement is expressly conditioned upon the Court entering an order as set forth herein.

III. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use ILYM Group, Inc. to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within thirty (30) calendar days after the Effective Date, Defendants will provide the Settlement Administrator with information for the Aggrieved Employees. Defendants will, in good faith, compile from their records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and will include each Aggrieved Employee's full name, last known mailing address, last known telephone number, number of applicable pay periods during the PAGA Period, and Social Security numbers or tax identification numbers. Because Social Security or tax identification numbers are included in the list, the Settlement Administrator will maintain the list securely and in confidence, and access will be limited to those with a need to use the list as part of the administration of the Settlement.

Within ten (10) business days of receiving the Aggrieved Employees' information from Defendants, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator will also determine whether Plaintiffs' right to withdraw from the Settlement pursuant to Paragraph II.4 has been triggered. The Settlement Administrator will obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letter and Individual Settlement Payments.** Within five (5) business days of receiving approval from all counsel for the Parties, pursuant to Paragraph III.2, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within twenty-one (21) calendar days of Defendants' deposit of the Maximum Settlement Amount, and after receiving approval from all counsel for the Parties pursuant to Paragraph III.2,

the Settlement Administrator will mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English, along with the Individual Settlement Payments to all Aggrieved Employees via First-Class U.S. Mail.

Each Individual Settlement Payment will be deemed 100% penalties and reported using an IRS Form 1099-MISC. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any funds from checks that are not negotiated within one hundred eighty (180) days of mailing to an Aggrieved Employee shall be transferred to Legal Aid at Work, a 501(c)(3) non-profit organization (EIN: 94-2783401) dedicated to providing legal services to the indigent, pursuant to California Code of Civil Procedure § 384.

4. **Undeliverable Letters.** The Settlement Administrator will exercise its best judgment to determine the current mailing address for each Aggrieved Employee. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Skip-Trace or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will perform a re-mailing.

Defendants fully discharge their obligations to those Aggrieved Employees to whom they will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees. Aggrieved Employees will not have any right to opt-out or object to this Settlement.

5. **Payment of Remainder.** Within twenty-one (21) calendar days of Defendants' deposit of the Maximum Settlement Amount, and after receiving approval from all counsel for the Parties pursuant to Paragraph III.2, the Settlement Administrator will issue the following payments: (1) the 75% share of the Net Settlement Fund to the LWDA; (2) Court-approved attorneys' fees and costs to Plaintiffs' Counsel; (3) Court-approved enhancement awards to Plaintiffs; and (4) Court-approved administration costs to the Settlement Administrator.

6. **Accounting.** The Settlement Administrator will provide an accounting declaration under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Paragraph III.3.

7. **Tax Consequences.** Individual Settlement Payments made under this Settlement will be attributed 100% as penalties and paid via IRS Form 1099-MISC issued to each Aggrieved Employee. Neither Plaintiffs nor Defendants, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

IV. MISCELLANEOUS PROVISIONS

1. **Non-Publicity.** The Parties agree that no Party will issue any press release nor other public representation regarding the settlement other than as necessary to obtain Court approval and effectuate the terms of the Settlement. The Parties and their counsel agree that they will not initiate

or have any contact with the press, respond to any press inquiry, or have any communication with the press about this case.

2. **Successors.** This Settlement will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Governing Law.** This Settlement will be construed under and governed by the laws of the State of California, without regard to choice of law principles. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement will be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it will be brought in the State of California, County of Los Angeles.

4. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action.

5. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

6. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction per California Code of Civil Procedure § 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

7. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties.

8. **Authorization to Enter into Settlement.** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If they are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

9. **Execution and Counterparts.** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

10. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

11. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

12. **Enforcement Action.** In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

13. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

14. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

15. **Cooperation and Execution of Necessary Documents.** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

16. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

PATRICIA CUELLAR

Dated: Oct 11, 2022


Patricia Cuellar (Oct 11, 2022 14:59 PDT)

Patricia Cuellar, Plaintiff

MICHELLE LEE

Dated: _____

Michelle Lee, Plaintiff

AVEANNA HEALTHCARE AS, LLC

Dated: _____

By:
Its:

PREMIER HEALTHCARE SERVICES, LLC

Dated: _____

By:
Its:

PATRICIA CUELLAR

Dated: _____

Patricia Cuellar, Plaintiff

MICHELLE LEE

Dated: Sep 20, 2022



Michelle Lee (Sep 20, 2022 14:04 PDT)
Michelle Lee, Plaintiff

AVEANNA HEALTHCARE AS, LLC

Dated: _____

By:
Its:

PREMIER HEALTHCARE SERVICES, LLC

Dated: _____

By:
Its:

PATRICIA CUELLAR

Dated: _____

Patricia Cuellar, Plaintiff

MICHELLE LEE

Dated: _____

Michelle Lee, Plaintiff

AVEANNA HEALTHCARE AS, LLC

Dated: 09/01/2022 _____

Oni Holley Brown

By: Oni Holley Brown
Its: VP, Deputy General Counsel & Chief Litigation Officer

PREMIER HEALTHCARE SERVICES, LLC

Dated: 09/01/2022 _____

Oni Holley Brown

By: Oni Holley Brown
Its: VP, Deputy General Counsel & Chief Litigation Officer

APPROVED AS TO FORM ONLY:

Date: Oct 11, 2022

HAINES LAW GROUP, APC

By: 
Paul K. Haines
Fletcher W. Schmidt
Attorneys for Plaintiff Patricia Cuellar

Date: _____

ZAKAY LAW GROUP, APC
JCL LAW FIRM, APC

By: _____
Shani Zakay
Jean-Claude Lapuyade
Attorneys for Plaintiff Michelle Lee

Date: _____

GORDON REES SCULLY MANSUKHANI, LLP

By: _____
Mollie Burks
Attorneys for Aveanna Healthcare AS, LLC and
Premier Healthcare Services, LLC

APPROVED AS TO FORM ONLY:

Date: _____

HAINES LAW GROUP, APC

By: _____

Paul K. Haines

Fletcher W. Schmidt

Attorneys for Plaintiff Patricia Cuellar

Date: September 20, 2022

ZAKAY LAW GROUP, APC

JCL LAW FIRM, APC



By: _____

Shani Zakay

Jean-Claude Lapuyade

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Date: _____

GORDON REES SCULLY MANSUKHANI, LLP

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HAINES LAW GROUP, APC

By: _____

Paul K. Haines

Fletcher W. Schmidt

Attorneys for Plaintiff Patricia Cuellar

Date: _____

ZAKAY LAW GROUP, APC
JCL LAW FIRM, APC

By: _____

Shani Zakay

Jean-Claude Lapuyade

Attorneys for Plaintiff Michelle Lee

Date: 9/1/2022

GORDON REES SCULLY MANSUKHANI, LLP

By: _____

Mollie Burks

Attorneys for Aveanna Healthcare AS, LLC and
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