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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

DAVID KUENSTLE and LUKAS AUSTIN-  
PAGE, individually and on behalf of all others  
similarly situated,

Plaintiff,

vs.

CHILDREN’S HOSPITAL LOS ANGELES  
MEDICAL GROUP, INC., a California  
corporation; and DOES 1 through 25,

Defendants.

Case No.: BC653858  
*Assigned to Hon. Ann I. Jones  
Dept. SSC-11*

**FIRST AMENDED STIPULATION  
OF CLASS ACTION SETTLEMENT**

Case Filed: March 13, 2017

1 **I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS**

2 This action was brought by Plaintiffs David Kuenstle, M.D. and Lukas Austin-Page,  
3 M.D. (“Plaintiffs”), individually and on behalf of certain physicians employed by Defendant  
4 Children’s Hospital Los Angeles Medical Group, Inc. (“Defendant”) who worked for  
5 Defendant in California during the Class Period, as defined below. Plaintiffs contend that  
6 they and some of Defendant’s other non-faculty physicians were improperly denied  
7 overtime pay, meal and rest breaks and pay for all hours worked, that Defendant issued them  
8 inaccurate wage statements, failed to timely pay wages, and failed to pay all wages owed at  
9 the time of separation, thereby resulting in violations of the applicable provisions of the  
10 Labor Code, the applicable Wage Order and the California Business & Professions Code  
11 section 17200, et seq., and were subject to civil penalties under the California Labor Code  
12 Private Attorneys General Act, Cal. Lab. Code §§ 2698-2699.5 (“PAGA”). Defendant  
13 denies that it violated California law and denies that it owes Plaintiffs and the other  
14 employees on whose behalf the lawsuit was filed any additional wages, penalties, or other  
15 relief.

16 Under the terms of the Settlement and after final approval and entry of judgment  
17 pursuant to California Rule of Court 3.769(a), Defendant will pay a gross settlement amount  
18 of one million and three hundred thousand dollars (\$1,300,000) (“Gross Settlement  
19 Amount”), plus the employer’s share of payroll taxes. The Settlement will be administered  
20 by a third-party settlement administrator with experience administering class action  
21 settlements of this type. Until distribution, the Gross Settlement Amount will be held in an  
22 account established by the Settlement Administrator in the name of a Qualified Settlement  
23 Fund. This is an opt-out settlement, and Class Members (as defined in Section II) will  
24 receive a settlement payment unless they opt-out of the settlement. Class Members shall not  
25 be required to submit a claim form.

26 The Parties agree that the following disbursements will be made from the Gross  
27 Settlement Amount, subject to Court approval at the final approval hearing:

- 28 A. Settlement Administration Costs, estimated to be \$11,500.

1 B. Class Counsel’s Attorneys’ Fees, to be approved by the Court, in an amount  
2 not to exceed four hundred and thirty-three thousand dollars (\$433,333), which is one-third  
3 of the Gross Settlement Amount;

4 C. Class Counsel’s reasonable and actual litigation costs, as approved by the  
5 Court in an amount not to exceed \$23,000;

6 D. A Service and Release Award to the Representative Plaintiffs in the amount  
7 of \$10,000 each, as payment for their time and efforts in pursuing this Action and for the  
8 broader releases that they will be providing to Defendant;

9 E. A payment of \$18,750 to the California Labor and Workforce Development  
10 Agency (“LWDA”), which is 75% of the \$25,000 allocated to the settlement of all PAGA  
11 claims.

12 F. The remainder of the Gross Settlement Amount (the “Net Settlement  
13 Amount”) will be distributed to Settlement Class Members based on the methodology  
14 discussed in section IV.J.1, below. It is estimated that the Net Settlement Amount will be  
15 approximately \$796,417 after deductions for Class Counsel’s Attorneys’ Fees, Class  
16 Counsel’s Costs, Settlement Administration Costs, the payment to the LWDA and the  
17 Service and Release Awards.

18 **II. DEFINITIONS**

19 As used in this Agreement, the following terms shall have the meanings set forth  
20 below:

21 A. “Action” means this putative class and representative action pending in Los  
22 Angeles Superior Court titled *Kuenstle v. Children’s Hospital Los Angeles Medical Group,*  
23 *Inc.*, Case Number BC 653858.

24 B. “Agreement” means this Stipulation of Class Action Settlement.

25 C. “Class” means all persons during the Class Period employed by Defendant, ,  
26 either directly or through a professional corporation, who are or were licensed physicians or  
27 surgeons and who are or were primarily engaged in duties that require licensure pursuant to  
28 Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions

1 Code, who are not members of the University of Southern California Faculty, and who,  
2 because of how they were compensated, were classified as exempt from applicable State and  
3 Federal wage-hour laws. Defendant represents that there are approximately 559 Class  
4 Members.

5 D. "Class Counsel" means Aaron C. Gundzik and Rebecca G. Gundzik,  
6 Gartenberg Gelfand Hayton LLP, 15260 Ventura Blvd, Suite 1920, Sherman Oaks, CA  
7 91403, (213) 542-2100, and Daniel M. Holzman, Caskey & Holzman, 24025 Park Sorrento,  
8 Ste. 400, Calabasas, CA 91302, (818) 657-1070.

9 E. "Class Counsel's Attorneys' Fees" means the amount to be paid to Class  
10 Counsel for attorneys' fees, as approved by the Court at the Final Fairness and Approval  
11 Hearing.

12 F. "Class Counsel's Costs" means the amount to be reimbursed to Class  
13 Counsel for their costs and expenses incurred in the case, as approved by the Court at the  
14 Final Fairness and Approval Hearing.

15 G. "Class Data" means each Class Member's full name, most recent known  
16 mailing address, email address (if Defendant maintains them), telephone number, social  
17 security number, the total compensation paid to each Class Member during the Class Period,  
18 and the number Transport shifts and Anesthesia Sedation shifts worked by such Class  
19 Member between March 13, 2013 and June 30, 2016.

20 H. "Class Member" is a person who is a member of the Class.

21 I. "Class Period" means the period from March 13, 2013 to November 5, 2018,  
22 inclusive.

23 J. "Complaint" means the Third Amended Complaint that will be filed in the  
24 Action pursuant to the Parties' stipulation. On September 20, 2018, Plaintiff David Kuenstle  
25 submitted an amended PAGA notification to the LWDA. No earlier than November 26,  
26 2018, which is approximately 65 days following the date of Plaintiff's amended PAGA  
27 notification, Plaintiffs will file their Third Amended Complaint pursuant to a stipulation of  
28

1 the parties. The form of Plaintiff’s Third Amended Complaint shall be substantially-similar  
2 to the draft Third Amended Complaint attached hereto as “Exhibit 2.”

3 K. “Court” means the Superior Court of the State of California, in and for the  
4 County of Los Angeles, where the Action is pending.

5 L. “Defendant’s Counsel” means J. Kevin Lilly and Elizabeth Staggs-Wilson of  
6 Littler Mendelson, P.C., 2049 Century Park E # 500, Los Angeles, CA 90067, and Jeffrey A.  
7 Berman of Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, CA  
8 90067-3021.

9 M. “Effective Date” means the following if no timely Objection to Settlement is  
10 submitted and Plaintiffs and Class Counsel waive their rights to appeal the final judgment:  
11 the date the Court enters a Final Approval Order and Judgment. If a timely Objection to  
12 Settlement is submitted, “Effective Date” means: the date upon which both of the following  
13 have occurred: (i) the date the Court enters a Final Approval Order and (ii) the Court’s  
14 Judgment approving the Settlement becomes Final. In the event that a timely Objection to  
15 Settlement is submitted, “Final” shall mean the latest of: (i) if there is an appeal of the  
16 Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such  
17 appeal, or the expiration of the time to file a petition for review with the California Supreme  
18 Court, or, (ii) if a petition for review is filed in the California Supreme Court, the date of  
19 denial of the petition, or the date the Judgment is affirmed pursuant to such petition; or (iii)  
20 if no appeal is filed, 65 days after service of the Notice of Entry of Judgment. Provided,  
21 however, if the California Labor & Workforce Development Agency (“LWDA”) has  
22 commenced an investigation or issued a Citation prior to the Effective Date, as determined  
23 under the forgoing definitions, the Effective Date will be extended to the date that the  
24 LWDA concludes its investigation or resolves the Citation (whichever is later). If the  
25 LWDA objects to the Settlement, the Effective Date will be extended to the date when the  
26 LWDA’s objection to the Settlement is resolved and no longer appealable.

27  
28

1 N. "Employer's Withholding Share" means the employer's share of all federal,  
2 state, and local taxes and required withholdings, including without limitation, FICA,  
3 Medicare tax, FUTA, and state unemployment taxes.

4 O. "Final Approval Order" means the Order Granting Final Approval of Class  
5 Action Settlement and Judgment entered by the Court.

6 P. "Final Fairness and Approval Hearing" means the hearing on Plaintiffs'  
7 Motion for Final Approval of Class Action Settlement at which the Court will be asked to  
8 give final approval to the settlement terms set forth herein and to enter judgment.

9 Q. "Gross Settlement Amount" means One Million Three Hundred Thousand  
10 Dollars (\$1,300,000), which Defendant will pay under this Settlement. With the exception of  
11 Defendant's payment of the Employer's Withholding Share, in no event will Defendant be  
12 liable for more than the Gross Settlement Amount.

13 R. "Net Settlement Amount" means the amount remaining from the Gross  
14 Settlement Amount after payments of Court-approved Class Counsel's Attorney's Fees and  
15 Class Counsel's Costs, Service and Release Award to the Representative Plaintiffs,  
16 Settlement Administration Costs, and payment to the LWDA.

17 S. "Notice of Settlement" means the "Notice of Proposed Class Action  
18 Settlement and Final Approval Hearing," the form of which is attached hereto as Exhibit A.

19 T. "Objection to Settlement" means any written objection to this Settlement sent  
20 by a Settlement Class Member to the Settlement Administrator as specified herein and in the  
21 Notice of Settlement. An Objection to Settlement must be sent to the Settlement  
22 Administrator within the time limitations set forth in this Agreement.

23 U. "Parties" means the Representative Plaintiffs and Defendant.

24 V. "Preliminary Approval Date" is the date the Court grants preliminary  
25 approval of this Settlement pursuant to California Rule of Court 3.769(c).

26 W. "Qualified Settlement Fund" and "QSF" means a Qualified Settlement Fund,  
27 which will be established by the Settlement Administrator pursuant to Section 468B(g) of  
28 the Internal Revenue Code for purposes of administering the Settlement. The Settlement

1 Administrator shall obtain for the QSF, its own Employer ID number. The Gross Settlement  
2 Amount and the Employer’s Withholding Share will be deposited into a bank account  
3 opened in the name of the QSF, and all payments and taxes shall be made from the QSF’s  
4 bank account.

5 X. “Qualifying Transport and/or Anesthesia Sedation Shift” means a shift during  
6 which a Class Member worked in the Transport Division between March 8, 2013 and June  
7 30, 2016, inclusive and/or the Anesthesia Sedation Division between March 8, 2013 and  
8 August 31, 2016, inclusive.

9 Y. As determined by the Court, “Released Claims” means all claims, rights,  
10 demands, liabilities and causes of action, whether in law (including under the Labor Code,  
11 the Wage Orders, the Fair Labor Standards Act, and the Business and Professions Code) or  
12 equity, arising from the same facts and/or claims alleged in the Complaint, or the claims that  
13 were pled or that could have been pled based on the facts alleged in the Complaint,  
14 including claims for wages, restitution, premium payments, statutory and civil penalties,  
15 liquidated damages, interest, fees, and costs, and claims arising under California’s Private  
16 Attorneys General Act, including but not limited to the following categories of claims and  
17 allegations—including claims under the California Wage Orders: (1) all claims relating to  
18 the failure to pay for all time worked, double time, overtime and minimum wage (such as  
19 Labor Code Sections 210, 558 and 1194 and the Fair Labor Standards Act (29 U.S.C. § 201  
20 *et seq.*); (2) all claims relating to the failure to timely pay all wages during employment,  
21 including overtime, premium and minimum wage (such as claims under Sections 204,  
22 226.7); (3) all claims relating to the failure to timely pay wages upon termination of  
23 employment, including overtime (such as claims under Labor Code Sections 202 and 203);  
24 (4) all claims relating to failure to provide accurate wage statements (such as under Labor  
25 Code section 226 and 226.3); (5) all claims relating to the failure to provide meal periods  
26 and/or authorize or permit rest periods (such as under Labor Code 226.7); and (6) all claims  
27 relating to alleged violation of Business and Professions Code Section 17200 *et seq.* This  
28 release is effective through November 5, 2018. The release of claims under the Fair Labor

1 Standards Act applies only to those Class Members who opt-in to the Fair Labor Standards  
2 Act collective action pursuant to Paragraph IV(J)(8) of this Agreement.

3 Z. “Released Parties” means Defendant Children’s Hospital Los Angeles  
4 Medical Group, Inc. and any of its former and present parents, subsidiaries, and affiliates,  
5 and their officers, directors, employees, partners, shareholders, agents, attorneys, insurers,  
6 and any other successors, assigns, or legal representatives, including Children’s Hospital  
7 Los Angeles, and the University of Southern California and their related entities.

8 AA. “Representative Plaintiffs” means Plaintiffs David Kuenstle, M.D. and  
9 Lukas Austin-Page, M.D.

10 BB. “Request for Exclusion” means a written request by a Class Member to be  
11 excluded from the Settlement Class that is submitted in accordance with the procedure set  
12 forth herein, also known as an “opt-out request.”

13 CC. “Service and Release Awards” means the payments to be made to the  
14 Representative Plaintiffs for their service to the Class and for the broader general releases  
15 that they are providing to Defendant, which are in addition to whatever payment they  
16 otherwise would be entitled to receive as a Settlement Class Member. The Service and  
17 Release Awards are subject to Court approval.

18 DD. “Settlement” means the disposition of the Action and all related claims  
19 effectuated by this Agreement.

20 EE. “Settlement Administration Costs” means the fees and costs incurred or  
21 charged by the Settlement Administrator in connection with the execution of its duties under  
22 this Agreement including, but not limited to fees and costs associated with: (1) establishing  
23 and maintaining the Qualified Settlement Fund and establishing a bank account in the name  
24 of the QSF; (2) preparing, issuing and/or monitoring reports, filings, and notices (including  
25 the cost of printing and mailing all notices and other documents to the Class Members)  
26 required to be prepared in the course of administering the Settlement; (3) computing the  
27 amount of the settlement payments, taxes, and any other payments to be made under this  
28 Agreement; (4) handling inquiries about the calculation of individual settlement payments;



1 (5) establishing and operating a settlement payment center website, address, and phone  
2 number to receive Class Members' inquiries about the Settlement; (6) providing a due  
3 diligence declaration for submission to the Court prior to the final approval hearing; (7)  
4 printing and providing Settlement Class Members and the Plaintiffs with W-2 and 1099  
5 forms as required under this Agreement and applicable law; (8) preparing, issuing, and filing  
6 any tax returns and information returns and any other filings required by any governmental  
7 taxing authority or other governmental agency; and (9) for such other tasks as the Parties  
8 mutually agree or the Court orders the Settlement Administrator to perform. Settlement  
9 Administration Costs will be paid out of the Gross Settlement Amount.

10 FF. "Settlement Administrator" refers to Phoenix Class Action Administration.

11 GG. "Settlement Class" means all Class Members who have not timely submitted  
12 a valid and complete Request for Exclusion.

13 HH. "Settlement Class Member" is a person who is a member of the Settlement  
14 Class.

15 II. "Wage Statement Period" means the period from March 13, 2016 to  
16 November 5, 2018, inclusive.

### 17 **III. BACKGROUND**

18 During the Class Period, Defendant has operated a non-profit corporation that  
19 employs physicians who perform services at Children's Hospital Los Angeles and  
20 elsewhere. Plaintiffs David Kuenstle and Lukas Austin-Page and the other Class Members  
21 are or were licensed physicians or surgeons who worked for Defendant during the Class  
22 Period. Plaintiffs contend that they and the other Class Members were improperly denied  
23 overtime pay, meal and rest breaks and pay for all hours worked, that Defendant issued them  
24 inaccurate wage statements, failed to timely pay wages, and failed to pay all wages owed at  
25 the time of separation, that Defendant engaged in unfair business practices and that it is  
26 liable for civil penalties under PAGA. Defendant contends that, among other things, all  
27 Class Members were properly classified as exempt from the applicable provisions of the  
28 Labor Code and the applicable Wage Order, and that it complied with all applicable laws

1 regarding the compensation of Class Members, and that it is not liable for any penalties  
2 under PAGA.

3         The Parties have undertaken significant investigation and discovery during the  
4 prosecution of this Action. Such discovery and investigation includes extensively  
5 interviewing the Representative Plaintiffs and other Class Members, depositions of one of  
6 the Representative Plaintiffs and several of Defendant's representatives and persons with  
7 percipient knowledge regarding Defendant's compensation practices and policies,  
8 Defendant's production and Plaintiffs' counsel's review of numerous personnel records, and  
9 other detailed information relevant to the Class Members' claims. Counsel for the Parties  
10 have investigated the law as applied to the facts discovered regarding the alleged claims of  
11 the Class and potential defenses thereto, and the potential damages claimed by the Class,  
12 including the review of the records produced by Defendant to Class Counsel during formal  
13 discovery as well as additional documents and information produced for the purposes of  
14 mediation and with an eye towards class certification. Class Counsel has also analyzed this  
15 documentation to determine the scope of Class damages.

16         The Parties' attorneys have engaged in extensive discussions about the strengths and  
17 weaknesses of the claims and defenses in the Action. On August 7, 2018, the Representative  
18 Plaintiffs and Class Counsel, and Defendant and Defendant's Counsel, attended a mediation  
19 session before an experienced and well-regarded mediator, Gig Kyriacou. The mediation  
20 resulted in the principle elements of this Agreement.

21         Plaintiffs and Class Counsel have concluded, after considering the sharply disputed  
22 factual and legal issues involved in this Action, the risks attending further prosecution, and  
23 the substantial benefits to be received pursuant to the compromise and settlement of the  
24 Action as set forth in this Agreement, that this Settlement is in the best interests of the  
25 Representative Plaintiffs and the Settlement Class and is fair and reasonable.

26         Similarly, Defendant has concluded that there are benefits associated with settling  
27 this Action. After considering the sharply disputed factual and legal issues involved in the  
28 Action, the expense and burden of protracted litigation, and its desire to put the controversy

1 to rest, Defendant believes that this Settlement is in Defendant’s best interests and is fair and  
2 reasonable.

3 This Settlement contemplates: (i) entry of an order preliminarily approving the  
4 Settlement and approving class and collective action certification of a provisional Class for  
5 settlement purposes only, contingent upon final approval of the Settlement; (ii)  
6 dissemination of a notice to Class Members about the settlement; (iii) entry of a Final  
7 Approval Order granting final approval of the Settlement; and (iv) entry of final judgment.

8 **IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

9 **A. Preliminary Approval of Settlement**

10 As soon as practicable, Class Counsel and Defendant’s Counsel will submit this  
11 Agreement to the Court for preliminary approval. Such submission will include such  
12 motions, pleadings, and evidence as may be required for the Court to determine that this  
13 Agreement is fair and reasonable, as required by California Code of Civil Procedure section  
14 382 and California Rule of Court 3.769, including a motion filed by Class Counsel  
15 requesting that the Court enter a preliminary approval order. Such submission will also  
16 include a proposed order. Defendant shall not oppose Class Counsel’s motion for  
17 preliminary approval of the settlement. Defendant may, however, provide a written response  
18 to any characterization of the law or facts contained in the motion for preliminary approval.  
19 The parties will attempt to schedule the preliminary approval hearing on or before  
20 November 5, 2018.

21 The Parties have agreed to the certification of the Class under California code of  
22 Civil Procedure Section 382 and collective action certification under 29 U.S.C. § 216(b) for  
23 the sole purposes of effectuating this Settlement. Should the Settlement be terminated for  
24 any reason, or should the Settlement not be approved by the Court or the judgment not  
25 become final, the fact that the Parties were willing to stipulate to class and collective action  
26 certification as part of the Settlement will have no bearing on, and will not be admissible in  
27 connection with, the issue of whether a class should be certified in a non-settlement context  
28 in this Action, and in any of those events, Defendant expressly reserves the right to oppose

1 class and collective action certification. Additionally, if the Settlement does not become  
2 final, this Agreement and all negotiations, court orders, and proceedings related thereto shall  
3 be without prejudice to the rights of all Parties hereto, and evidence relating to the  
4 Agreement and all negotiations shall not be admissible in the Action or otherwise.

5       Should the Court decline to certify the Class or to approve all material aspects of the  
6 Settlement, the Settlement will be null, and void and the Parties will have no further  
7 obligations under it.

8       If the Court grants preliminary approval but does not grant final approval of the  
9 Settlement, then the preliminary approval order shall be vacated in its entirety.

10       **B. Cooperation**

11       The Parties agree to cooperate fully with each other to accomplish the terms of this  
12 Agreement, including but not limited to, execution of such documents and to take such other  
13 reasonably necessary action to implement the terms of this Agreement. No party, nor any of  
14 its attorneys or agents, shall solicit or encourage any Class Member to opt out of or object to  
15 the Settlement.

16       **C. Notice of Settlement**

17       As soon as practicable, but no later than fourteen (14) calendar days after the  
18 Preliminary Approval Date, Defendant will provide the Settlement Administrator with the  
19 Class Data in an electronic format acceptable to the Settlement Administrator. The Class  
20 Data will be provided simultaneously to Class Counsel.

21       Using the Class Data, the Settlement Administrator will: (1) finalize and print the  
22 Notice of Settlement; (2) check all addresses against the National Change of Address  
23 database; and (3) within ten (10) calendar days of receiving the Class Members'  
24 information, send to each Class Member via First-Class United States mail a Notice of  
25 Settlement to the most recent address known for each Class Member. It will be conclusively  
26 presumed that if an envelope so mailed has not been returned within fifteen (15) calendar  
27 days of the mailing, the Class Member received the Notice of Settlement. In addition to  
28

1 mailing, the Settlement Administrator will provide a copy of the Notice of Settlement to  
2 Class Members using any email addresses that have been provided Defendant.

3 **D. Re-Sending Class Notices**

4 In the event that Defendant's Counsel or Class Counsel becomes aware of new  
5 addresses for any Class Member, prior to the filing of the motion for final approval, such  
6 information must immediately be communicated to the Settlement Administrator. The  
7 Settlement Administrator will then re-send a Notice of Settlement to the Class Member(s) at  
8 the new address.

9 If a Notice of Settlement is returned as undeliverable without a forwarding address,  
10 the Settlement Administrator shall attempt to locate a current mailing address for the Class  
11 Member by skip tracing using the Class Member's Social Security Number and will mail the  
12 Notice of Settlement to the updated address identified. If a Class Member cannot be located  
13 within two attempts at mailings by the Settlement Administrator, the Class Notice for that  
14 individual will be deemed undeliverable. For any Notice of Settlement that is returned as  
15 undeliverable, the Settlement Administrator will perform a utility database search or skip  
16 trace. The returned Notices of Settlement will be re-mailed to the new addresses obtained for  
17 such Class Members throughout the forty-five (45) day response period. Notwithstanding  
18 anything to the contrary in this Stipulation and absent approval from the Parties, through  
19 their counsel, no Notice of Settlement shall be re-sent to a Class Member less than 75 days  
20 before the date set for the Final Fairness and Approval Hearing. It will be conclusively  
21 presumed that if an envelope so re-mailed has not been returned within fifteen (15) calendar  
22 days of re-mailing, the Class Member received the Notice of Settlement.

23 **E. Requests for Exclusion (Opt-Outs)**

24 **1. Deadline for Requests for Exclusions**

25 Any Class Member who wishes to be excluded from the Settlement must notify the  
26 Settlement Administrator, within forty-five (45) calendar days of mailing (or within forty-  
27 five (45) calendar days of any re-sending pursuant to Section IV(D) of the Notice of  
28 Settlement, in writing of his or her desire to be excluded by mailing his or her own written

1 statement to the Settlement Administrator that clearly expresses such desire and is signed by  
2 such Class Member. In addition, the Class Member must (1) sign the request (2) include his  
3 or her name, address, telephone number and the last four digits of his or her Social Security;  
4 (3) send the request by mail to the Settlement Administrator at the specified address; and (4)  
5 have the request postmarked on or before the deadline. The date of the postmark on the  
6 return mailing envelope shall be the exclusive means to determine whether a request for  
7 exclusion has been timely submitted. Any Class Member who submits a valid and timely  
8 request to be excluded from the Settlement shall be barred from participating in this  
9 Settlement, shall be barred from objecting to this Settlement, and shall receive no benefit  
10 from this Settlement.

## 11 **2. Effect of Not Submitting Valid Request for Exclusion**

12 Any Class Member who fails to submit a timely, complete, and valid Request for  
13 Exclusion shall be barred from opting out of the Settlement. It shall be conclusively  
14 presumed that, if a Request for Exclusion is not postmarked on or before the expiration of  
15 the period to submit a Request for Exclusion, the Class Member did not make the request in  
16 a timely manner. Under no circumstances shall the Settlement Administrator have the  
17 authority to extend the deadline for Class Members to file a Request for Exclusion.

18 Unless a Class Member submits a timely, complete, and valid Request for Exclusion,  
19 he or she shall be bound by the terms and conditions of this Agreement. The releases  
20 provided for in this Agreement shall conclusively preclude any Settlement Class Member  
21 from asserting any of the Released Claims against any of the Released Parties in any  
22 judicial, administrative, or arbitral forum.

## 23 **3. Settlement Administrator to Provide Copies**

24 The Settlement Administrator shall promptly provide Class Counsel and Defendant's  
25 Counsel with copies of all Requests for Exclusion as they are received.

## 26 **4. Defendant's Option to Rescind**

27 If three percent (3%) or more of the Settlement Class Members elect not to  
28 participate in the Settlement, Defendant may, at its election, rescind the Settlement. In that

1 event, all actions taken in furtherance of the Settlement will be null and void. Defendant  
2 must exercise this right of rescission, in a writing to Class Counsel, within fourteen (14)  
3 calendar days of the date that the Settlement Administrator notifies the Parties of the total  
4 number of Class Members who have opted out of the Settlement. If Defendant exercises this  
5 right of rescission, Defendant must pay the all expenses incurred by the Settlement  
6 Administrator as of the date of Defendant's notice of rescission.

7 **F. Declaration of Compliance**

8 As soon as practicable following the Preliminary Approval Date, the Settlement  
9 Administrator shall provide Class Counsel and Defendant's Counsel with a declaration  
10 attesting to completion of the notice process set forth in this Section IV, including the  
11 number of notices sent and returned, an explanation of efforts to resend undeliverable  
12 notices, and copies of all Requests for Exclusion, which declaration shall be filed with the  
13 Court by Class Counsel along with their papers requesting final approval of the Settlement.

14 **G. Sufficient Notice**

15 Compliance with the procedures described in this Section IV shall constitute due and  
16 sufficient notice to Class Members of this Settlement and of the Final Fairness and Approval  
17 Hearing, shall satisfy the requirements of due process, and nothing else shall be required of  
18 the Representative Plaintiffs, Class Counsel, Defendant, Defendant's Counsel, or the  
19 Settlement Administrator to provide notice of the Settlement and the Final Fairness and  
20 Approval Hearing.

21 **H. Objections to Settlement**

22 **1. Deadline for Objections**

23 Any Class Member wishing to object to the approval of this Settlement shall inform  
24 the Settlement Administrator in writing of his or her intent to object by following the  
25 procedure set forth in the Notice of Settlement within forty-five (45) calendar days of  
26 mailing (or within forty-five (45) calendar days of any re-sending pursuant to Section  
27 IV(D)) of the Notice of Settlement. A Class Member who does not submit a valid and timely  
28

1 Request for Exclusion and who objects to the Settlement will still be considered a  
2 Settlement Class Member.

3 **2. Responses to Objections**

4 Class Counsel and Defendant’s Counsel shall file any written objections from Class  
5 Members submitted to the Settlement Administrator in accordance with this Agreement, and  
6 Class Counsel’s and Defendant’s Counsel’s responses to such objections, at least five (5)  
7 court days before the Final Fairness and Approval Hearing.

8 **I. Final Fairness and Approval Hearing**

9 On the date set by the Court, the Final Fairness and Approval Hearing shall be held  
10 before the Court in order to: (1) determine whether the Court should give this Agreement  
11 final approval; (2) determine whether Class Counsel’s application for attorneys’ fees and  
12 costs, and request for the Service and Release Payments to the Representative Plaintiffs,  
13 should be granted; and (3) consider any timely Objections to Settlement, including Class  
14 Counsel’s and Defendant’s Counsel’s responses thereto. At the Final Fairness and Approval  
15 Hearing, the Representative Plaintiffs, Class Counsel, and Defendant’s Counsel shall ask the  
16 Court to give final approval to this Settlement. Upon final approval, the Court shall enter a  
17 Final Approval Order (in a form submitted by Class Counsel and approved by Defendant’s  
18 Counsel) which has the effect of adjudicating all claims set forth in the Complaint and  
19 implementing the release of Released Claims, as set forth in this Agreement. The Final  
20 Approval Order will be posted on the Settlement Administrator’s website. Such posting shall  
21 constitute notice of judgment to the Class, pursuant to California Rule of Court 3.771(b).  
22 However, the Parties shall still be required to file a Notice of Entry of Judgment with the  
23 Court and shall serve it upon any class members who file objections to the Settlement.

24 **J. Settlement Payments to Participating Settlement Class Members**

25 **1.** Payments under this Settlement Agreement shall be made by the  
26 Settlement Administrator as follows, subject to Court approval at the Final Fairness and  
27 Approval Hearing: Defendant will determine and provide to the Settlement Administrator as  
28 part of the Class Data, as to each participating Settlement Class Member, the total



1 compensation received during the Class Period for shifts worked in other than Transport  
2 and/or Anesthesia Sedation, the total number of pay periods worked between March 13,  
3 2016 and November 5, 2018, the total number of Qualifying Transport and/or Anesthesia  
4 Sedation Shifts worked by the Class Member, and whether the Settlement Class Member  
5 was employed by Defendant at any time between March 13, 2016 and November 5, 2018.

6 The Net Settlement Amount, less the \$6,250 to be paid as PAGA penalties to the  
7 Settlement Class Members, shall be divided among and distributed to individual Settlement  
8 Class Members as follows:

9 Forty percent (40%) of the Net Settlement Amount shall be allocated to Settlement  
10 Class Members for the work they performed during Qualifying Transport and/or Anesthesia  
11 Sedation Shifts (as that term is defined in Section II herein) the following formula:

12 **(Settlement Class Member's Qualifying Transport and/or Anesthesia Sedation**  
13 **Shifts ÷ All Qualifying Transport and/or Anesthesia Sedation Shifts Worked by**  
14 **Settlement Class Members) x 40% of Net Settlement Amount**

15 Ten percent (10%) of the Net Settlement Amount shall be allocated to all Settlement  
16 Class Members who worked during the Wage Statement Period using the following formula:

17 **(Number of pay periods worked by Settlement Class Member during the Wage**  
18 **Statement Period ÷ total number of pay periods worked by Settlement Class**  
19 **Members during the Wage Statement Period) x 10% of Net Settlement Amount**

20 The remaining 50 percent (50%) of the Net Settlement Amount shall be allocated to  
21 all Settlement Class Members as follows:

22 The Settlement Administrator shall rank the Settlement Class Members based upon  
23 the amount of total compensation they received from Defendant during the Settlement Class  
24 Period for shifts worked in other than Transport and/or Anesthesia Sedation. In the ranking,  
25 the Settlement Class Members receiving the most compensation will be at the top and the  
26 Settlement Class Members with the lowest compensation will be at the bottom. After the  
27 ranking has been completed, the Settlement Class Members will be divided into four equal  
28 (or closely equal) quartiles. The Settlement Class Members in the bottom quartile will each

1 receive 1 point for every pay period they worked during the Settlement Class Period; the  
2 Settlement Class Members in the second quartile will receive 2 points for every pay period  
3 they worked during the Settlement Class Period; the Settlement Class Members in the third  
4 quartile will receive 3 points for every pay period they worked during the Settlement Class  
5 Period; and the Settlement Class Members in the top quartile will receive 4 points for every  
6 pay period they worked during the Settlement Class Period.

7 The Settlement Administrator will then apply the following formula:  
8 **(Number of points received by Settlement Class Member ÷ total number of**  
9 **points received by all Settlement Class Members) x 50% of Net Settlement**  
10 **Amount**

11 A Class Member who, during the Class Period worked in Transport and/or  
12 Anesthesia and also received compensation for shifts worked in other divisions, shall receive  
13 payments under all three formulas.

14 The 25% portion of the PAGA settlement amount that is payable to aggrieved  
15 employees pursuant to Labor Code section 2699(i), totaling \$6,250, shall be distributed  
16 equally among Settlement Class Members who were employed by Defendant at any time  
17 between March 13, 2016 and November 5, 2018.

18 The Settlement Administrator, on Defendant's and Class Counsel's collective behalf,  
19 shall have the authority and obligation to make payments, credits, and disbursements,  
20 including payments and credits in the manner set forth herein, to Settlement Class Members  
21 calculated in accordance with the methodology set out in this Agreement and orders of the  
22 Court.

23 The Parties acknowledge and agree that the formula used to calculate individual  
24 settlement payments does not imply that all the elements of damages alleged in the Action  
25 are not being considered. The above formula was devised as a practical and logistical tool to  
26 simplify the settlement process.

27  
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1                   **2.     Inclusion of Estimated Settlement Payment Information in Notice**  
2                   **of Settlement.**

3                   The Notice of Settlement sent to each Class Member shall state an estimate of the  
4 amount of the Class Member’s share of the settlement and, if applicable, (1) the number of  
5 Qualifying Transport and/or Anesthesia Sedation Shifts worked by the Class Member, (2)  
6 the number of pay periods worked during the Wage Statement Period, and (3) the total  
7 compensation received during the Class Period for shifts worked in other than Transport  
8 and/or Anesthesia Sedation, as reflected in the Class Data. The estimated settlement  
9 payment included in the Notice of Settlement will be calculated by assuming that no Class  
10 Members will be excluded from the Settlement.

11                   **3.     Eligibility**

12                   Settlement Class Members (but not Class Members who exclude themselves (or opt-  
13 out of) the Settlement), will become eligible to receive a settlement payment from  
14 Defendant, distributed through the Settlement Administrator.

15                   Should any question arise regarding the determination of eligibility for, or the  
16 amounts of, any settlement payments under the terms of this Agreement, Class Counsel and  
17 Defendant’s Counsel shall meet and confer in an attempt to reach agreement and, if they are  
18 unable to do so, the issue shall be submitted to the Court for determination on an expedited  
19 basis, through the submission of letter briefs of no more than three pages.

20                   **4.     Disputes about Total Compensation, Qualifying Transport and/or**  
21                   **Anesthesia Sedation Shifts, and Pay Periods Worked During**  
22                   **Wage Statement Period**

23                   If a Class Member disagrees with the amount of relevant compensation or the  
24 number of Qualifying Transport and/or Anesthesia Sedation Shifts and/or number of Pay  
25 Periods worked during the Wage Statement Period, as stated in his or her Notice of  
26 Settlement, he or she may dispute those figures by informing the Settlement Administrator  
27 of the amount of compensation and/or number of Qualifying Transport and/or Anesthesia  
28 Sedation Shifts and/or number of pay periods within the Wage Statement Period in dispute

1 and submitting supporting documentation (such as, without limitation, payroll or time  
2 keeping records, and paycheck stubs) prior to the deadline for objecting to the Settlement.  
3 Class Members must notify the Settlement Administrator of any such dispute within forty-  
4 five (45) days of mailing the Notice of Settlement. The Settlement Administrator shall rely  
5 upon Defendant's records in order to resolve claims by Class Members during the claims  
6 process. It is understood by the Parties that the Settlement Administrator will communicate  
7 any Class Member disputes to Defendant's counsel for verification of employment dates,  
8 relevant compensation and/or number of Qualifying Transport and/or Anesthesia Sedation  
9 Shifts and/or number of Wage Statements worked during the Wage Statement Period and/or  
10 eligibility to participate in the Settlement. If there is a dispute, the Settlement Administrator  
11 will consult with Class Counsel and Defendant's Counsel to determine whether an  
12 adjustment is warranted. However, the Settlement Administrator shall have the sole  
13 discretion to determine any such disputes.

14 **5. Allocation of Settlement Payments**

15 Payment to each Settlement Class Member shall be allocated as follows: one-third  
16 shall be attributed to wages under the California Labor Code, the Wage Orders, and the Fair  
17 Labor Standards Act, to be reported on a W-2 form; one-third as penalties, PAGA penalties,  
18 and liquidated damages; and one-third as interest. The amount of penalties, PAGA penalties,  
19 liquidated damages and interest will be reported on an IRS Form 1099.

20 **6. Payment of Payroll Taxes.**

21 The portion of each participating Settlement Class Member's settlement payment  
22 that constitutes wages shall be net of the participating Settlement Class Member's share of  
23 all federal, state, and local taxes and required withholdings, including without limitation,  
24 FICA, Medicare tax, FUTA, and state unemployment taxes. The Employer's Withholding  
25 Share shall be paid by Defendant separately and in addition to Defendant's payment of the  
26 Gross Settlement Amount.

27 For each participating Settlement Class Member, the Settlement Administrator shall  
28 determine the Employer's Withholding Share. Information related to the Employer's

1 Withholding Share for each participating Settlement Class Member shall be provided to  
2 Defendant by the Settlement Administrator. If Defendant disagrees with the Settlement  
3 Administrator's determination of the Employer's Withholding Share, it will communicate  
4 with and share information reasonably necessary to reach a good faith determination of the  
5 correct Employer's Withholding Share.

6 **7. Payments to Participating Settlement Class Members**

7 Within ten (10) days of Defendant's deposit of the Gross Settlement Amount with  
8 the Settlement Administrator, the Settlement Administrator will make the settlement  
9 payments to Settlement Class Members based on the payment formulas set forth herein.

10 **8. Opt-In and Release of FLSA Claims**

11 Opt-in and release language regarding the release of the FLSA claim will be printed  
12 on the Individual Settlement Payment checks, with instructions that cashing such check  
13 constitutes consent under the FLSA to opt into the collective action and to release all claims  
14 under the FLSA. The language to be included will be substantially similar to the following:

15 My endorsing, cashing, or depositing of this check constitutes my consent to join the  
16 lawsuit entitled *David Kuenstle et al. v. Children's Hospital Los Angeles Medical*  
17 *Group, Inc.*, pending in the Superior Court of the State of California for the County  
of Los Angeles, Case No. BC653858, pursuant to the provisions of the Fair Labor  
Standards Act ("FLSA"), 29 U.S.C. Section 216(b), and to release all claims I might  
have against the Released Parties under the FLSA.

18 **K. The Settlement Administrator**

19 The Settlement Administrator will perform the duties specified in this Agreement  
20 and any other duties incidental to such obligations. The Settlement Administrator's duties  
21 shall include, without limitation: preparing and distributing the Notice of Settlement;  
22 establishing a Qualified Settlement Fund ("QSF") pursuant to Section 468B(g) of the  
23 Internal Revenue Code for purposes of administering the Settlement, obtaining an Employer  
24 ID for the QSF, calculating and directing the disbursement of payments to Settlement Class  
25 Members, Class Counsel, the Class Representative and the LWDA; calculating and timely  
26 paying any and all payroll taxes from the wages portion of the Net Settlement Amount to the  
27 appropriate tax authorities, as required under this Agreement and applicable law; handling  
28

1 inquiries about the calculation of individual settlement payments; preparing and filing any  
2 tax returns and information returns and any other filings required by any governmental  
3 taxing authority or other governmental agency; providing weekly status reports to the  
4 Parties' counsel; advising Defendant and Class Counsel of any Class Members who submit  
5 objections and/or requests for exclusions from the Settlement; providing a due diligence  
6 declaration for submission to the Court prior to the final approval hearing; printing and  
7 providing Settlement Class Members and Plaintiffs with W-2 and 1099 forms as required  
8 under this Agreement and applicable law; arranging for and remitting funds from any  
9 uncashed and undeliverable settlement checks to the California Department of Industrial  
10 Relations Unclaimed Wage Fund for further handling on behalf of the Settlement Class  
11 Member; and for such other tasks as the Parties mutually agree or the Court orders the  
12 Settlement Administrator to perform. The Settlement Administrator shall establish a  
13 settlement payment center address, telephone number, facsimile number, and email address  
14 to receive Class Members' inquiries about the Notice of Settlement, requests to be excluded  
15 from the Settlement and settlement payments, and shall establish a dedicated static website  
16 and post on it, this Agreement, the Preliminary Approval Order, and Final Approval Order  
17 and Judgment.

18 The Parties confirm, and Class Counsel and Defendant's Counsel confirm that they  
19 do not have any financial interest in the Settlement Administrator or otherwise have a  
20 relationship with the Settlement Administrator that could create a conflict of interest.

21 **L. Time for Payment by Defendant**

22 Within ten (10) calendar days after the Effective Date, Defendant shall wire the  
23 Gross Settlement Amount and Employer's Withholding Share to the Escrow Account.

24 If, after the Court enters a Final Approval Order, Defendant fails to timely pay the  
25 amount required to satisfy its payment obligation under this Agreement, Plaintiff, at his  
26 option, may either (1) declare the settlement terminated, in which case, the parties agree that  
27 the Court will nullify the Final Approval Order and Judgment and all liability releases  
28 provided for in this Agreement and Plaintiffs may continue to prosecute his claims against

1 Defendant, or (2) seek to collect all amounts owed under the Final Approval Order and  
2 Judgment.

3 **M. Payments to Class Counsel, the Representative Plaintiffs and the**  
4 **Settlement Administrator.**

5 Within ten (10) days of Defendant's deposit of the Gross Settlement Amount into the  
6 QSF, the Settlement Administrator shall make payment from the QSF to: (1) Class Counsel,  
7 both the Class Counsel's Attorneys' Fees and Class Counsel's Costs, awarded to Class  
8 Counsel by the Court; (2) Plaintiffs David Kuenstle, M.D. and Lukas Austin-Page, M.D., the  
9 Service and Release Awards approved by the Court; and (3) the Settlement Administrator's  
10 fees, as approved by the Court. These payments will be reported on an IRS Form 1099.

11 The Court's approval of a Service and Release Award is not a material term of the  
12 Settlement. If the Court does not approve or approves only a lesser amount than requested  
13 for the Service and Release Award, the other terms of the Settlement shall still apply. The  
14 Court's refusal to approve the Service and Release Award requested by Class Counsel does  
15 not give Representative Plaintiffs or Class Counsel any basis to abrogate the Settlement.  
16 Any amount of the Service and Release Award requested by Class Counsel but unapproved  
17 by the Court shall be allocated to the Net Settlement Amount.

18 The Service and Release Award shall be allocated as 1099 income, which shall not  
19 be subject to payroll taxes and withholdings and will be reported on an IRS 1099 Form.  
20 Representative Plaintiffs will be responsible for correctly characterizing this compensation  
21 for tax purposes and for paying any taxes owing on said amount.

22 **N. Payments to the California Labor and Workforce Development Agency**

23 Within ten (10) days of Defendant's deposit of the Gross Settlement Amount into the  
24 QSF, the Settlement Administrator will make the payment to the LWDA of \$18,750, or such  
25 other amount as approved by the Court.

26 **O. Un-negotiated Settlement Payment Checks**

27 If any Class Member's settlement payment check has not been negotiated sixty (60)  
28 days after disbursement, the Settlement Administrator shall attempt to contact each

1 individual to advise them to cash their checks, and to offer to replace any checks reported as  
2 either lost or stolen. In attempting to contact such persons, the Settlement Administrator  
3 will send notices by mail to the individuals' last known addresses (as provided by  
4 Defendant) after first checking those addresses against the NCOA database and utility  
5 database and by telephoning and/or emailing such persons, in the event that Defendant  
6 provides telephone numbers and/or email addresses for such persons.

7 If a Class Member's check is not cashed within 180 days, the check will be void and  
8 a stop payment order may be placed on the check. In such event, the Settlement  
9 nevertheless will be binding upon the Settlement Class Member. The funds represented by  
10 all uncashed settlement checks will be transmitted by the Settlement Administrator to the  
11 California State Controller's Office Unclaimed Property Fund.

12 **P. Class Counsel Attorneys' Fees and Costs**

13 Defendant agrees to and will not oppose Class Counsel's application for an award of  
14 attorneys' fees of up to four hundred and thirty-three thousand dollars (\$433,333), which is  
15 one-third of the Gross Settlement Amount.

16 Defendant agrees to and will not oppose Class Counsel's application for an award of  
17 their reasonable litigation expenses and costs in an amount not to exceed \$23,000.

18 Class Counsel's Attorney's Fees and Class Counsel's Costs, as awarded by the  
19 Court, shall be paid from the Gross Settlement Amount.

20 Upon the payment of the Court-approved amount of Class Counsel's Attorneys' Fees  
21 and Class Counsel's Costs, and except as otherwise provided by this Agreement, Class  
22 Counsel waives any claim to costs and attorneys' fees and expenses against Defendant  
23 arising from or related to the Action, including but not limited to claims based on the  
24 California Labor Code, the California Code of Civil Procedure, or any other statute or law.  
25 Provided, however, nothing in this Agreement shall prevent Class Counsel from seeking  
26 additional fees for enforcing the terms of this Agreement.

27 The Court's approval of fees and costs requested by Class Counsel is not a material  
28 term of the Settlement. If the Court does not approve or approves only a lesser amount than



1 that requested by Class Counsel for attorneys' fees or costs, the other terms of the  
2 Settlement shall still apply. The Court's refusal to approve the attorneys' fees or costs  
3 award requested by Class Counsel does not give Representative Plaintiffs or Class Counsel  
4 any basis to abrogate the Settlement. Any amount of an attorneys' fees and costs award  
5 requested by Class Counsel but unapproved by the Court shall be allocated to the Net  
6 Settlement Amount.

7 **Q. Taxes**

8 **1. Withholding and Reporting Requirements**

9 The Settlement Administrator shall be responsible for ensuring that all taxes owed by  
10 Settlement Class Members for amounts received pursuant to this Settlement are timely paid  
11 to the appropriate tax authorities. The Settlement Administrator's responsibilities include the  
12 following: (a) filing all Federal, state, and local employment tax returns, tax withholding  
13 returns, and any other tax returns associated with the taxes, (b) timely and proper filing of all  
14 required Federal, state, and local information returns (e.g., 1099s, W-2s, etc.) with the  
15 appropriate taxing authorities, and (c) completion of any other steps necessary for  
16 compliance with any tax obligations of the settlement fund under Federal, state and/or local  
17 law. To verify the Settlement Administrator's compliance with the foregoing withholding  
18 and reporting requirements, as soon as administratively practicable, the Settlement  
19 Administrator shall furnish Class Counsel and Defendant's Counsel with copies of all filed  
20 tax returns and information returns (including all 1099 and W-2 information returns), and a  
21 final accounting adequate to demonstrate full compliance with all tax withholding, payment  
22 and reporting obligations.

23 **2. Circular 230 Disclaimer**

24 Each party to this Agreement (for purposes of this section, the "Acknowledging  
25 Party"; and each party to this Agreement other than the Acknowledging Party, and "Other  
26 Party") acknowledges and agrees that: (1) no provision of this Agreement, and no written  
27 communication or disclosure between or among the Parties or their attorneys and other  
28 advisers, is or was intended to be, nor shall any such communication or disclosure constitute

1 or be construed or be relied upon as, tax advice within the meaning of United States  
2 Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging  
3 Party (a) has relied exclusively upon his, her, or its own, independent legal and tax advisers  
4 for advice (including tax advice) in connection with this Agreement, (b) has not entered into  
5 this Agreement based upon the recommendation of any other party or any attorney or  
6 advisor to any other party, and (c) is not entitled to rely upon any communication or  
7 disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be  
8 imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has  
9 imposed any limitation that protects the confidentiality of any such attorney's or adviser's  
10 tax strategies (regardless of whether such limitation is legally binding) upon disclosure by  
11 the Acknowledging Party of the tax treatment or tax structure of any transaction, including  
12 any transaction contemplated by this Agreement.

13 **R. Adjustment of Gross Settlement Amount**

14 The Class Settlement Amount was calculated with, and is premised on, the  
15 understanding that as of August 7, 2018, there were approximately 559 Class Members  
16 eligible to participate in the Settlement. If, at the time Defendant provides the Class Data, as  
17 specified in Section IV.C herein below, the number of Class Members increases by more  
18 than ten percent (10%), Plaintiffs' Counsel, may, at its election, rescind the Settlement at  
19 any time prior to the date that the Court issues its Final Approval Order. In the event that  
20 the number of Class Members increases by more than ten percent (10%), the parties will  
21 meet and confer in good faith to determine whether they can agree on an upward adjustment  
22 of the Gross Settlement Amount.

23 **V. LIMITATIONS ON USE OF THIS SETTLEMENT**

24 **A. No Admission of Liability**

25 Neither the acceptance nor the performance by Defendant of the terms of this  
26 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be,  
27 construed as, or deemed a precedent or an admission by Defendant of the truth or merit of  
28 any allegations in the Complaint, or that it has any liability to the Representative Plaintiffs

1 or the Class Members on their claims. Defendant denies that it has engaged in any unlawful  
2 activity, has failed to comply with the law in any respect, or has any liability to anyone  
3 under the claims asserted in the Action. This Agreement is entered into solely for the  
4 purpose of compromising highly disputed claims.

5 **B. Nullification**

6 If the Court for any reason does not approve this Settlement, this Agreement shall be  
7 null and void and all Parties to this Settlement shall stand in the same position, without  
8 prejudice, as if the Settlement had been neither entered into nor filed with the Court.

9 Invalidation of any material portion of this Agreement shall invalidate this  
10 Settlement in its entirety unless the Parties shall agree in writing that the remaining  
11 provisions shall remain in full force and effect.

12 **VI. RELEASE**

13 **A. Effect of Release**

14 It is the desire of the Representative Plaintiffs, Settlement Class Members, and  
15 Defendant to fully, finally, and forever settle, compromise, and discharge the Released  
16 Claims. Upon the final approval by the Court of this Settlement Agreement and Defendant's  
17 payment of the amounts owed under this Agreement, and except as to such rights or claims  
18 as may be created by this Settlement Agreement, the Class Members shall fully release and  
19 discharge the Released Parties from any and all Released Claims that accrued during the  
20 Class Period. This release shall be binding on all Class Members who have not timely  
21 submitted a valid and complete Request for Exclusion, including each of their respective  
22 attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs, successors,  
23 and assigns, and shall inure to the benefit of the Released Parties.

24 **B. The PAGA Release**

25 The Parties acknowledge and agree that for purposes of the PAGA penalties agreed  
26 to herein, all Class Members employed by Defendant on or after March 9, 2016, were  
27 allegedly aggrieved in the same manner pursuant to Labor Code § 2698, et. seq., in that each  
28 Class Member allegedly suffered at least one of the alleged Labor Code violations asserted

1 in the Complaint for which the PAGA provides an available remedy.

2 **VII. RELEASE BY THE REPRESENTATIVE PLAINTIFFS**

3       Upon final approval of this Settlement and Defendant’s payment of the amounts  
4 owed under this Agreement, the Representative Plaintiffs fully release and forever discharge  
5 Defendant, the Released Parties, and their respective present and former officers, directors,  
6 employees, shareholders, members, agents, trustees, representatives, attorneys, insurers,  
7 parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and  
8 any individual or entity that could be jointly liable with Defendant, from any and all claims,  
9 causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands,  
10 obligations, attorney’s fees, costs, and any other form of relief or remedy in law, equity, or  
11 whatever kind or nature, whether known or unknown, suspected or unsuspected, exclusive  
12 of any workers compensation claims, including but not limited to (1) the Action and any  
13 claims arising out of or related to the Action, (2) any claims for wrongful termination,  
14 discrimination, harassment, and/or retaliation pursuant to Title VII of the Civil Rights Act of  
15 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and Housing Act,  
16 Cal. Gov’t Code Section 12900 *et seq.*, or any claims for violation of public policy, (3) any  
17 act, omission, or occurrence in the Action and any claims arising out of or related to the  
18 Action taking place on or before the Effective Date of the Settlement, and (4) and any other  
19 form of relief or remedy of any kind, nature, or description whatsoever, whether premised  
20 on statute, contract, tort, or other theory of liability under state, federal, or local law.

21       The Representative Plaintiffs hereby agree that, notwithstanding § 1542 of the  
22 California Civil Code, all claims that the Representative Plaintiffs may have, known or  
23 unknown, suspected or unsuspected, are hereby released. Section 1542 provides:

24               **A general release does not extend to claims which the creditor does not**  
25               **know or suspect to exist in his or her favor at the time of executing the**  
26               **release, which if known by him or her must have materially affected his**  
26               **or her settlement with the debtor.**

27 The Representative Plaintiffs expressly waive the provisions of Section 1542 with full  
28 knowledge and with the specific intent to release all known or unknown, suspected or

1 unsuspected, claims arising on or before the Effective Date of the Settlement, and therefore  
2 specifically waive the provisions of any statute, rule, decision, or other source of law of the  
3 United States or of any state of the United States or any subdivision of a state which  
4 prevents release of unknown claims.

5 **VIII. MISCELLANEOUS PROVISIONS**

6 **A. Amendments**

7 This Settlement Agreement may only be modified or changed by a writing signed by  
8 the Parties or by their counsel.

9 **B. Integrated Agreement**

10 After this Agreement is signed and delivered by all Parties to the Action and their  
11 counsel, this Agreement and its exhibits will constitute the entire agreement between the  
12 Parties to the Action relating to the Settlement, and it will then be deemed that no oral  
13 representations, warranties, covenants, or inducements have been made to any Party  
14 concerning this Agreement or its exhibits other than the representations, warranties,  
15 covenants, and inducements expressly stated in this Agreement and its exhibits.

16 **C. Fair, Adequate and Reasonable Settlement**

17 The Parties agree that the Settlement is fair and reasonable and will so represent to  
18 the Court. In addition, the mediator may execute a declaration supporting the Settlement  
19 and the reasonableness of this Settlement, and the Court may, in its discretion, contact the  
20 mediator to discuss the Settlement and whether or not the Settlement is fair and reasonable.  
21 Defendant does and will specifically deny all claims or liability as part of this Settlement.

22 **D. No Inducements**

23 Plaintiffs and Defendant acknowledge that they are entering into this Agreement as a  
24 free and voluntary act without duress or undue pressure or influence of any kind or nature  
25 whatsoever and that neither Plaintiffs nor Defendant have relied on any promises,  
26 representations, or warranties regarding the subject matter hereof other than as set forth in  
27 this Agreement.

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1           **E.     No Prior Assignment**

2           The Parties hereto represent, covenant, and warrant that they have not directly or  
3 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber  
4 to any person or entity any portion of any liability, claim, demand, action, cause of action, or  
5 rights herein released and discharged except as set forth herein.

6           **F.     No Retaliation or Advice**

7           Defendant agrees not to retaliate against any Class Member, and Defendant will not  
8 induce or offer any advice to any current or former employee to opt out of, or object to, the  
9 Settlement.

10          **G.     Attorney's Fees**

11          To the extent that any Party institutes any legal action, arbitration, or other  
12 proceeding to enforce the terms of the Settlement, the prevailing Party will be entitled to  
13 recover their reasonable attorneys' fees and costs from the other Party or Parties.

14          **H.     Applicable Law**

15          All terms and conditions of this Agreement and its exhibits will be governed by and  
16 interpreted according to the laws of the State of California, without giving effect to any  
17 conflict of law principles or choice of law principles.

18          **I.     Entry of Judgment Pursuant to Terms of Settlement**

19          The Parties agree that upon the Settlement of this case, the Court may enter judgment  
20 pursuant to the terms of this Settlement and the Court will retain jurisdiction over the Parties  
21 to enforce the Settlement until performance in full of the terms of the Settlement.

22          **J.     Notices**

23          All notices, requests, demands and other communications required or permitted to be  
24 given pursuant to this Agreement shall be in writing, and shall be delivered personally or by  
25 first class mail to the undersigned persons at their respective addresses as set forth below:  
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CLASS COUNSEL

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**K. Binding on Successors**

This Agreement shall be binding and shall inure to the benefit of the Parties to the Action and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

**L. Counterparts**

This Agreement, and any amendments hereto, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute the same instrument.

**M. Warranties and Representations**

With respect to themselves, each of the Parties to this Action and or their agent or counsel represents, covenants, and warrants that they have full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery, and performance of this Agreement.

**N. Confidentiality Preceding Preliminary Approval**

The Parties agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the

1 fact, amount or terms of the Settlement prior to an order of the Court preliminarily  
2 approving the Settlement. Prior to an Order granting preliminary approval of the Settlement,  
3 the Parties agree that any communication about the Settlement to other Class Members will  
4 be limited to a statement that a settlement has been reached and that the details will be  
5 communicated in a forthcoming Court-approved Notice of Settlement.

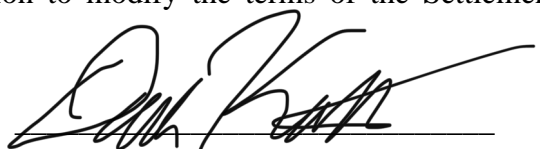
6 **O. Representation by Counsel**

7 The Parties to this Action acknowledge that they have been represented by counsel  
8 throughout all negotiations that preceded the execution of this Agreement, and that this  
9 Agreement has been executed with the consent and advice of counsel.

10 **P. Continuing Jurisdiction**

11 The Court shall retain jurisdiction over the implementation of this Settlement as well  
12 as any and all matters arising out of, or related to, the implementation of this Settlement.  
13 The Court shall not have jurisdiction to modify the terms of the Settlement without the  
14 consent of all of the Parties.

15 Dated: November \_\_, 2018  
16 February 7, 2019

  
David Kuenstle, M.D.

17  
18 Dated: November \_\_, 2018

\_\_\_\_\_  
Lukas Austin-Page, M.D.

19  
20 Dated: November \_\_, 2018

Children's Hospital Of Los Angeles Medical Group,  
Inc.

21  
22 By: \_\_\_\_\_

23 Its: \_\_\_\_\_

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25 [Signatures continued on next page]

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February 12, 2019

  
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Lukas Austin-Page, M.D.

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Children's Hospital Of Los Angeles Medical Group,  
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23 Its: \_\_\_\_\_

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25 [Signatures continued on next page]

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20 Dated: ~~November \_\_, 2018~~  
*February 7, 2019*

*JK*

Children's Hospital Of Los Angeles Medical Group,  
Inc.

By: *[Signature]*

Its: *CEO*

25 [Signatures continued on next page]  
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1 Approved as to form:

2 Dated: February 14, 2019

LITTLER MENDELSON, P.C.

3  
4 By:   
J. Kevin Lilly

5 Attorneys for Defendant Children's Hospital Medical  
6 Group, Inc.

7 Dated: February 14, 2019


SEYFARTH SHAW LLP

8  
9 By:  DW  
Jeffrey A. Berman

10 Attorneys for Defendant Children's Hospital Medical  
11 Group, Inc.

12  
13 Dated: February 13, 2019


GARTENBERG GELFAND HAYTON LLP

14  
15   
Aaron C. Gundzik

16 Attorneys for Plaintiffs David Kuenstle, M.D. and  
17 Lukas Austin-Page, M.D., individually and on behalf  
18 of all others similarly situated

19 Dated: February 13, 2019

CASKEY & HOLZMAN

20  
21   
22 Daniel M. Holzman

23 Attorneys for Plaintiffs David Kuenstle, M.D. and  
24 Lukas Austin-Page, M.D., individually and on behalf  
25 of all others similarly situated  
26  
27  
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