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19 THE PERMANENTE MEDICAL GROUP, INC.

20
21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

22 ROSA MARIA GARCIA, as an individual and on
23 behalf of all others similarly situated,

24 Plaintiffs,

25 v.

26 THE PERMANENTE MEDICAL GROUP, INC.,
a California corporation; and DOES 1 through 50,
27 inclusive,

28 Defendants.

Case No. STK-CV-UOE-2019-10008

**STIPULATION AND SETTLEMENT OF
CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTION**

Date Action Filed: August 1, 2019
Trial Date: None Set

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1 Subject to final approval by the Court, which counsel and the Parties agree to diligently pursue
2 and recommend in good faith, Plaintiffs Rosa Maria Garcia, Jennifer Horton, and Brittany Miller
3 (“Plaintiffs”), individually and on behalf of all other similarly situated persons and aggrieved
4 employees, on the one hand, and Defendant The Permanente Medical Group, Inc. (“Defendant”), on the
5 other hand (collectively, the “Parties” and individually, a “Party”), hereby agree to the following binding
6 settlement of the class, collective, and representative action designated *Garcia et al. v. The Permanente*
7 *Medical Group, Inc.* (San Joaquin County Superior Court Case No. STK-CV-UOE-2019-10008, (the
8 “Action”), pursuant to the terms and conditions set forth below (the “Settlement,” “Settlement
9 Agreement” or “Agreement”). Upon the Effective Date, and the payment by Defendant of all monies
10 due under the Agreement, the Parties shall file a Satisfaction of Judgment with the Court.

11 **I. Definitions.**

12 The following definitions are applicable to this Settlement Agreement. Definitions contained
13 elsewhere in this Settlement Agreement will also be effective:

14 **A. “Action.”**

15 The case entitled *Garcia et al. v. The Permanente Medical Group, Inc.*, San Joaquin County
16 Superior Court Case No. STK-CV-UOE-2019-10008 and *Miller v. The Permanente Medical Group,*
17 *Inc.*, Alameda County Superior Court Case No. RG19045904, combined as reflected in Section I.B,
18 below.

19 **B. “Amended Complaint.”**

20 Prior to seeking Court approval of the Settlement, Plaintiffs Garcia and Horton will file a second
21 amended complaint to add causes of action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*
22 (“FLSA”), to the extent the FLSA overlaps with the Released Claims. The amendment will also add
23 other claims and theories encompassed by the settlement to ensure that all included claims and theories
24 are clearly articulated and covered. Defendant agrees not to remove the case to federal court following
25 the filing of the second amended complaint. The amendment will also add Brittany Miller as a plaintiff,
26 and will add the causes of action and theories alleged in *Miller v. The Permanente Medical Group, Inc.*,
27 Alameda County Superior Court Case No. RG19045904 (the “Miller Action”). Within 5 days after the
28 Effective Date of the instant settlement, Plaintiff Miller will request to have the class claims alleged in

1 the *Miller* action dismissed without prejudice. If the Court does not grant preliminary or final approval
2 of the Settlement, the Parties shall be returned to their respective courts and statuses as of the date and
3 time immediately prior to the Parties' mediation, and the Parties shall proceed in all respects as if this
4 Settlement Agreement had not been executed, except that the costs of administration shall be borne
5 equally by both Parties.

6 **C. "Attorneys' Fees and Costs."**

7 The attorneys' fees agreed upon by the Parties and approved by the Court for Class Counsel's
8 litigation and resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the
9 Action as set forth in Class Counsel's billing statements to clients, including, but not limited to, costs
10 associated with documenting the Settlement, providing any notices required as part of the Settlement or
11 Court's Order, securing the Court's approval of the Settlement, administering the Settlement, mediation
12 expenses, any expert expenses, and securing entry of judgment in the Action. Class Counsel will
13 request attorneys' fees not to exceed one-third (1/3) of the Class Settlement Amount which is presently
14 \$9,730,000 (i.e., no more than \$3,243,333.33 in attorneys' fees, presently), plus litigation costs incurred
15 not to exceed \$30,000 ("Attorneys' Fees and Costs"). The amount of Attorneys' Fees and Costs
16 awarded are subject to the Court's approval. Defendant has agreed not to oppose Class Counsel's
17 request for Attorneys' Fees and Costs as set forth above. Such Attorneys' Fees and Costs shall be paid
18 from the Class Settlement Amount. Defendant shall have no liability for any other attorneys' fees or
19 costs. Subject to Court approval, Class Counsel have agreed to the allocation of attorneys' fees and
20 costs among Class Counsel as follows: 50% to Blumenthal Nordrehaug Bhowmik De Blouw LLP and
21 50% to the law firms of Diversity Law Group, P.C. and Polaris Law Group LLP to be allocated between
22 them as they shall determine. The allocation of litigation costs shall be to the firm that incurred the
23 expense. To the extent that the Court approves less than the amount of Attorneys' Fees and Costs that
24 Class Counsel request, the difference between the requested and awarded amounts will be distributed to
25 Class Members on a proportional basis relative to the size of their claims as set forth in Section V below.
26 Class Counsel will be issued an IRS Form 1099 for the Attorneys' Fees and Costs detailed in this
27 Section and shall be solely and legally responsible for paying all applicable taxes on the payment made
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1 pursuant to this Section. No counsel shall be entitled to attorneys' fees or costs for work performed in
2 this Action or in the *Miller* Action other than as provided in this Settlement Agreement. The instant
3 Settlement Agreement is the exclusive means for recovery of attorneys' fees and costs incurred in this
4 Action and in the *Miller* Action by any attorney, law firm and/or other legal services provider.

5 **D. "Class Counsel."**

6 Diversity Law Group, P.C., Polaris Law Group LLP, and Blumenthal Nordrehaug Bhowmik De
7 Blouw LLP shall be appointed Class Counsel upon approval by the Court.

8 **E. "Class List."**

9 A complete list of all Class Members that Defendant will diligently and in good faith compile
10 from their records and provide to the Settlement Administrator within thirty (30) calendar days after
11 Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft
12 Office Excel spreadsheet and will include each Class Member's full name, most recent mailing address,
13 telephone number, Social Security number, dates of employment (*i.e.*, hire date and termination date, if
14 applicable), number of workweeks that a Class Member worked, and any other relevant information
15 needed to calculate settlement payments.

16 **F. "Class Member(s)" or "Settlement Class."**

17 All non-exempt persons employed by Defendant in the State of California during the Class
18 Period. It shall be an opt out class. Individuals who submit a timely and valid request for exclusion
19 shall not be Class Members.

20 **G. "Class Period."**

21 The period from December 6, 2015 through the earlier of the date of preliminary approval or
22 December 31, 2020.

23 **H. "Class Representative Enhancement Payments."**

24 The amount to be paid to Plaintiffs in recognition of their efforts and work in prosecuting the
25 Action on behalf of Class Members and for their general release of claims. Subject to the Court granting
26 Final Approval of this Settlement Agreement, Plaintiffs will request Court approval of Class
27 Representative Enhancement Payments in the amount of \$10,000 each. Plaintiffs will each be issued an
28 IRS Form 1099 in connection with their Class Representative Enhancement Payment. Plaintiffs shall be

1 solely and legally responsible for paying any and all applicable taxes on these payments and shall hold
2 Defendant harmless from any claim or liability for taxes, penalties or interest arising as a result of the
3 payment. The Class Representative Enhancement Payments will be paid from the Class Settlement
4 Amount and will be in addition to each Plaintiff's Individual Settlement Payment paid pursuant to the
5 Settlement and are conditioned on the execution of a general release of claims as set forth below.
6 Defendant makes no representations as to the tax treatment or legal effect of the payments called for
7 herein, and Plaintiffs are not relying on any statement or representation by Defendant or its counsel in
8 this regard. To the extent that the Court approves less than the amount of Class Representative
9 Enhancement Payments that Plaintiffs request, the difference between the requested and awarded
10 amounts will be distributed to Class Members on a proportional basis relative to the size of their claims
11 as set forth in Section IV below.

12 **I. "Class Settlement Amount."**

13 The sum of no more than a Gross Fund Value of \$9,730,000 to be paid by Defendant in full
14 satisfaction of all claims arising from the Action. The settlement will be on a common fund basis, there
15 will be no claim form or claims process and there will be no reversion to Defendant. The Class
16 Settlement Amount includes all Individual Settlement Payments to Class Members, the Class
17 Representative Enhancement Payments to Plaintiffs, Settlement Administration Costs to the Settlement
18 Administrator, the Labor and Workforce Development Agency Payment, and the Attorneys' Fees and
19 Costs. Defendant will be responsible for any employer payroll taxes required by law, separate and in
20 addition to the Class Settlement Amount, including the employer FICA, FUTA, and SDI contributions
21 on the wage portion of the Individual Settlement Payments.

22 **J. "Defendant's Counsel"**

23 Christian Rowley, Kerry Friedrichs, and Parnian Vafaenia of Seyfarth Shaw LLP.

24 **K. "Effective Date."**

25 The date on which the Final Award becomes final. For purposes of this Section, the Final Award
26 "becomes final" only after the Court grants the Motion for Final Approval. If there are no objector(s) or
27 intervener(s), then the Parties agree that there is no right to appeal and therefore this Settlement shall be
28 deemed final and the Effective Date shall be Fifteen (15) days after the Court has entered a Final

1 Approval Order and Judgment which approves the Settlement; provided, however, in the event an appeal
2 is filed, Plaintiffs will file the appropriate motion to dismiss and if such appeal is filed before the
3 settlement payments are mailed, such mailing shall be stayed until the appeal has been dismissed. If
4 there is any objection or motion to intervene filed prior to the Court's Final Approval Order and
5 Judgment, the Effective Date shall be the latter of: (i) if no appeal is filed, the expiration date of the time
6 for the filing or noticing of any appeal from, or other challenge to, the Order Granting Final Approval
7 (this time period shall not be less than 60 calendar days after the Court's Order is entered); (ii) the date
8 of affirmance of an appeal of the Order Granting Final Approval becomes final under the California
9 Rules of Court; or (iii) the date of final dismissal of any appeal from the Order Granting Final Approval
10 or the final dismissal of any proceeding on review of any court of appeal decision relating to the Order
11 Granting Final Approval. It is the intention of the Parties that the Settlement shall not become effective
12 until the Court's Final Order approving the Settlement has become completely final, and no timely
13 recourse remains for an appellant or objector to contest the Settlement.

14 **L. "Final Approval" or "Final Award."**

15 The court order granting final approval of the Settlement Agreement.

16 **M. "Individual Settlement Payment."**

17 Each Class Member's share of the Net Settlement Amount, which shall be distributed to the
18 Class Members, less employee portions of state and federal withholding taxes, including the employee
19 FICA, FUTA and SDI contributions and any other applicable payroll deductions required by law as a
20 result of the payment of the amount allocated to such Class Member as set forth herein.

21 **N. "LWDA Notice."**

22 The Parties agree that Plaintiffs will submit a Notice to the Labor and Workforce Development
23 Agency ("LWDA") of this Settlement along with a copy of this Settlement Agreement within ten (10)
24 calendar days of its execution by all Parties and Class Counsel, and will thereafter submit a copy of any
25 judgment or any other order (*e.g.*, the Final Award) providing for an award of civil penalties in
26 conformity with Labor Code Section 2699(l).

27 **O. "LWDA Payment."**

28 The amount that the Parties have agreed to pay to the LWDA in connection with settlement of

1 Plaintiff's PAGA claims. The Parties have agreed that \$100,000 of the Class Settlement Amount will be
2 allocated to the resolution of any Class Members' claims arising under the PAGA ("PAGA Settlement
3 Amount"). Pursuant to the PAGA, \$75,000 (75%) of the PAGA Settlement Amount will be paid to the
4 LWDA and \$25,000 (25%) of the PAGA Settlement Amount will be included in the Net Settlement
5 Amount. Any change in the requested LWDA Payment is not a material term of this Agreement. If the
6 Court approves a lesser or greater amount than that requested, the other terms of this Agreement shall
7 still remain in effect. However, some approval of an LWDA Payment is a material term of the
8 Settlement and this Agreement. If the Court does not approve any LWDA Payment, then the entire
9 Agreement will be, at Defendant's sole discretion, void and unenforceable. In such a case, the Parties
10 shall be returned to their respective statuses as of the date and time immediately prior to the execution of
11 this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement
12 had not been executed, except that the costs of administration shall be borne by Defendant.

13 **P. "Net Settlement Amount."**

14 The portion of the Class Settlement Amount remaining after deduction of the approved Class
15 Representative Enhancement Payments, Settlement Administration Costs, LWDA Payment, and the
16 Attorneys' Fees and Costs.

17 **Q. "Notice of Class Action Settlement."**

18 The document substantially in the form attached as Exhibit 1 that will be mailed to Class
19 Members' last known addresses and which will provide Class Members with information regarding the
20 Action and information regarding the Settlement of the Action.

21 **R. "Notice of Objection."**

22 A Class Member's valid and timely written objection to the Settlement Agreement. For the
23 Notice of Objection to be valid, it must include the objector's full name, signature, address, telephone
24 number and a written statement of all grounds for the objection accompanied by legal support, if any, for
25 such objection. The Notice of Objection must be returned by mail or fax to the Settlement
26 Administrator at the specified address or facsimile number and postmarked or faxed on or before the
27 Response Deadline. The date of the postmark or fax receipt confirmation will be the exclusive means to
28 determine whether a Notice of Objection has been timely submitted. Plaintiffs agree not to object to the

1 Settlement.

2 Absent good cause found by the Court, Class Members who fail to make objections in the
3 manner specified above shall be deemed to have waived any objections and shall be foreclosed from
4 making any objection (whether by appeal or otherwise) to the Settlement Agreement. Neither the Parties
5 nor their counsel will solicit or otherwise encourage Class Members to submit written objections to the
6 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any
7 Class Members with respect to any such objections to this Settlement. The Settlement Administrator
8 shall provide counsel for the Parties with complete copies of all objections received, including the date
9 of postmark or fax receipt confirmation for each objection, within five (5) business days of receipt.
10 Class Counsel will provide a single packet of copies of any objections and supporting documents to the
11 Court at least sixteen (16) court days before the Final Approval Hearing. A Class Member who
12 excludes himself or herself from the Settlement shall lose standing to object.

13 **S. “Notice Packet.”**

14 The Notice of Class Action Settlement and Individual Settlement Payment calculations, to
15 include workweek information.

16 **T. “PAGA Period.”**

17 The period from July 15, 2018 through the earlier of the date of preliminary approval or
18 December 31, 2020.

19 **U. “Plaintiffs.”**

20 Plaintiffs Rosa Maria Garcia, Jennifer Horton, and Brittany Miller on behalf of themselves and
21 all others similarly situated and the general public.

22 **V. “Plaintiffs’ Released Claims.”**

23 Upon the Effective Date, and as a condition of receiving any portion of their Class
24 Representative Enhancement Payments, Plaintiffs shall fully and finally release the Released Parties
25 from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance,
26 regulation, common law, or other source of law, including but not limited to claims arising from or
27 related to their employment with Defendant and their compensation while an employee of Defendant
28 which occurred before or during the Class Period. Plaintiffs’ Released Claims include, but are not

1 limited to, all claims arising from or related to the Action. Plaintiffs' Released Claims include all claims
2 for unpaid wages, including, but not limited to, failure to pay minimum wages, overtime compensation,
3 and interest; the calculation of the regular rate of pay; unpaid wages; meal period and rest period wages
4 and penalties; reimbursement for business expenses; payment for all hours worked, including off-the-
5 clock work; wage statements; deductions; failure to keep accurate records; unfair business practices;
6 penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum
7 wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiffs' Released Claims
8 include all claims arising under the California Labor Code; all claims arising under the California
9 Industrial Welfare Commission Wage Orders; the California Private Attorneys General Act of 2004
10 (PAGA); California Business and Professions Code section 17200, *et seq.*; the California Civil Code, to
11 include sections 3287, 3336 and 3294; California Code of Civil Procedure § 1021.5; the California
12 common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* and all regulations
13 implementing and interpreting the FLSA, federal common law; the Employee Retirement Income
14 Security Act, 29 U.S.C. § 1001, *et seq.* (ERISA), all claims for lost wages and benefits, emotional
15 distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local
16 laws for discrimination, harassment, retaliation, and wrongful termination, such as, by way of example
17 only, (as amended) 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, the Americans with
18 Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the California Fair
19 Employment and Housing Act (FEHA), and the law of contract and tort. Notwithstanding the foregoing,
20 this waiver and release of claims does not extend to any rights which as a matter of law cannot be
21 waived and released by private agreement, the rights to sue to enforce this Agreement, and rights to
22 vested benefits, unemployment benefits, disability benefits, social security benefits, workers'
23 compensation benefits, claims outside the Class Period. Excluded from Plaintiffs' Released Claims are
24 the unrelated claims of Plaintiff Miller set forth in causes of action 10 through 14 of the First Amended
25 Complaint in the *Miller* Action which are being separately settled and the rights created by that separate
26 settlement.

27 Plaintiffs' Released Claims include all claims as set forth above, whether known or unknown.
28 Even if Plaintiffs discover facts in addition to or different from those that they now know or believe to

1 be true with respect to the subject matter of Plaintiffs’ Released Claims, those claims will remain
2 released and forever barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights and
3 benefits of California Civil Code Section 1542, which reads:

4 A general release does not extend to claims that the creditor or releasing party does not
5 know or suspect to exist in his or her favor at the time of executing the release and that, if
6 known by him or her, would have materially affected his or her settlement with the debtor
7 or released party.

8 **W. “Preliminary Approval.”**

9 The Court’s order granting preliminary approval of the Settlement Agreement.

10 **X. “Qualified Settlement Account.”**

11 The fund established by the Settlement Administrator pursuant to Internal Revenue Code Section
12 1.468B-1.

13 **Y. “Released Claims.”**

14 By operation of the entry of the Final Approval Order and Judgment, and except as to rights this
15 Agreement creates, each Class Member releases Defendant, and each of its present and former affiliates
16 and all of their officers, directors, employees, agents, servants, registered representatives, attorneys,
17 insurers, successors, and assigns, and any other persons acting by, through, under or in concert with any
18 of them (“Released Parties”), from any and all claims, debts, liabilities, demands, obligations, penalties,
19 premium pay, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of
20 whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under
21 federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime
22 wages), claims regarding rounding, grace periods, shift tolerance, failure to pay for all hours worked
23 (including off-the clock work), failure to provide meal and rest periods, short/late meal and rest periods,
24 failure to relieve of all duties during meal and rest periods, failure to timely pay wages and final wages,
25 failure to properly calculate the regular rate of pay, donning and doffing, pre or post shift testing or
26 inspections, expense reimbursement claims, reporting time, failure to furnish accurate wage statements
27 including claims derivative and/or related to these claims, liquidated damages, conversion of wages, that
28 the Labor Code Section 514 exemption does not apply to Defendant’s employees, pre and post-shift work

1 and record-keeping violations that occurred during the Class Period. This Release shall include all claims
2 and theories arising under the California Labor Code, wage orders, and applicable regulations, including
3 Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 510, 511, 512, 515, 517,
4 551, 552, 558, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and 2802 as well as
5 claims under Business and Professions Code section 17200 *et seq.*, and/or Labor Code Section 2698 *et*
6 *seq.* based on alleged violations of the above Labor Code provisions, as alleged in the lawsuits. The
7 release of claims shall include a Civil Code Section 1542 release as to the Released Claims only. The
8 Release shall expressly exclude all other claims, including claims for vested benefits under ERISA or
9 Taft-Hartley plans, wrongful termination, unemployment insurance, disability insurance, Social Security,
10 workers' compensation, and class claims outside of the class period. The Release shall apply to the dates
11 of the Class Period, as defined above, only. For the post-Class Period period of time, Defendant shall
12 have the option to pay in an additional proportionate amount based on the number of additional
13 workweeks.

14 In addition to the claims enumerated above, each member of the Settlement Class who endorses
15 his or her Individual Settlement Payment check by signing the back of the check and depositing or cashing
16 the check shall release and forever waive any and all claims the Settlement Class member may have under
17 claims asserted in the operative first amended Complaint for violations of the Fair Labor Standards Act
18 ("FLSA"); and any and all claims for restitution, including without limitation back pay, attorneys' fees
19 and costs, interest, and liquidated damages under the FLSA that occurred during the Class Period ("FLSA
20 Release").

21 This Agreement is contingent upon the releases by Plaintiffs and the Class Members as described
22 herein, and upon covenants by Plaintiffs and Class Members that they will not participate in any actions,
23 lawsuits, proceedings, complaints or charges in any court or before any administrative body related to
24 any claims they have released under this Agreement.

25 **Z. "Released Parties."**

26 Defendant and each of its present and former affiliates and all of their officers, directors,
27 employees, agents, servants, registered representatives, attorneys, insurers, successors, and assigns, and
28 any other persons acting by, through, under or in concert with any of them.

1 **AA. “Request for Exclusion.”**

2 A notice submitted by a Class Member requesting to be excluded from the Settlement. For the
3 Request for Exclusion to be valid, it must include the Class Member’s full name and a written statement
4 requesting to be excluded from this Settlement and do not wish to participate in the settlement. The
5 Request for Exclusion must be returned by mail or fax to the Settlement Administrator at the specified
6 address or facsimile number and postmarked or faxed on or before the Response Deadline. The date of
7 the postmark or fax receipt confirmation will be the exclusive means to determine whether a Request for
8 Exclusion has been timely submitted. A Class Member who does not submit a timely and valid Request
9 for Exclusion from the Settlement will be deemed a Class Member and will be bound by all terms of the
10 Settlement Agreement if the Settlement is granted Final Approval by the Court. Plaintiffs agree not to
11 request to be excluded from the Settlement.

12 Any Class Member who opts out of this Agreement may not submit an Objection and shall not
13 receive any Individual Settlement Payment, and shall not be bound by the releases set forth in this
14 Agreement. If a Class Member submits both a Request for Exclusion and an Objection, then the
15 Request for Exclusion will be valid and will invalidate the Objection.

16 **BB. “Response Deadline.”**

17 The deadline by which Class Members must mail or fax to the Settlement Administrator valid
18 Requests for Exclusion, Notices of Objection to the Settlement, or workweek disputes. The Response
19 Deadline will be thirty (30) calendar days from the initial mailing of the Notice Packet by the
20 Settlement Administrator, unless the 30th day falls on a Sunday or Federal holiday, in which case the
21 Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The
22 Response Deadline for Requests for Exclusion, Notices of Objection, or workweek disputes will be
23 extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the
24 Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the
25 Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The
26 Response Deadline may also be extended by express agreement between Class Counsel and Defendant.
27 Under no circumstances, however, will the Settlement Administrator have the authority to unilaterally
28 extend the deadline for Class Members to submit a Request for Exclusion, Notice of Objection to the

1 Settlement, or workweek disputes.

2 **CC. “Settlement Administrator.”**

3 After obtaining not-to-exceed quotes from a minimum of two qualified settlement
4 administrators, Phoenix Settlement Administrators shall be the third-party class action settlement
5 administrator as mutually agreed to by the Parties and approved by the Court for the purposes of
6 administering this Settlement and will issue to class members Forms W-2 and 1099 for all amounts paid
7 under this settlement, making all deductions and withholdings required under law. The Parties each
8 represent that they do not have any financial interest in the Settlement Administrator or otherwise have a
9 relationship with the Settlement Administrator that could create a conflict of interest.

10 **DD. “Settlement Administration Costs.”**

11 The costs payable from the Class Settlement Amount to the Settlement Administrator are for
12 administering this Settlement, including, but not limited to, printing, distributing, and tracking
13 documents for this Settlement, address searches, calculating estimated amounts per Class Member, tax
14 reporting, distributing the Class Settlement Amount, and providing necessary reports and declarations,
15 and other duties and responsibilities set forth herein to process this Settlement Agreement, and as
16 requested by the Parties. The Settlement Administration Costs will be paid from the Class Settlement
17 Amount, including, if necessary, any such costs in excess of the amount represented by the Settlement
18 Administrator as being the maximum costs necessary to administer the Settlement. The Settlement
19 Administration Costs are estimated to not exceed \$185,500 based upon the receipt of not-to-exceed
20 quote from the Settlement Administrator. To the extent actual Settlement Administration Costs are
21 greater than \$185,500, such excess amount will be deducted from the Class Settlement Amount, subject
22 to the Court’s approval. Settlement Administration Costs allocated but not paid to the Settlement
23 Administrator will be distributed to the Settlement Class pro rata.

24 **EE. “Settlement Payment Check.”**

25 The Settlement Payment Check is the payment to Class Members. The back of the Settlement
26 Payment Check shall state, immediately below the space where the check is to be endorsed by the payee:
27 “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to
28 the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor

1 Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims,
2 and agree to release all of my FLSA claims that are covered by the Settlement.”

3 **II. Recitals**

4 A. On August 1, 2019, plaintiff Rosa Maria Garcia filed a Complaint against Defendant in
5 the Superior Court of the State of California, County of San Joaquin (the “Garcia Action”). Plaintiff
6 Rosa Maria Garcia asserted claims that Defendant:

- 7 1. Violated California Labor Code § 226(a);
- 8 2. Violated the Private Attorney General Act, California Labor Code §§ 2698, et
9 seq. (“PAGA”);

10 B. On September 5, 2019, Defendant filed a general denial along with 15 affirmative
11 defenses to the Complaint in the Garcia Action.

12 C. On December 6, 2019, plaintiff Brittany Miller filed a Complaint against Defendant in
13 the Superior Court of the State of California, County of Alameda (the “Miller Action”). Plaintiff
14 Brittany Miller asserted claims that Defendant:

- 15 1. Violated California Business and Professions Code § 17200 et seq.;
- 16 2. Failed to pay minimum wages in violation of California Labor Code §§ 1194,
17 1197 and 1197.1;
- 18 3. Failed to pay overtime wages in violation of California Labor Code § 510, et seq.;
- 19 4. Failed to provide required meal periods in violation of California Labor Code §§
20 226.7 & 512 and the applicable IWC Wage Order;
- 21 5. Failed to provide required rest periods in violation of California Labor Code §§
22 226.7 & 512 and the applicable IWC Wage Order;
- 23 6. Failed to provide accurate itemized wage statements in violation of California
24 Labor Code § 226;
- 25 7. Failed to provide wages when due in violation of California Labor Code §§ 201,
26 202 and 203;
- 27 8. Failed to timely pay earned wages in violation of California Labor Code § 204(d);
- 28 9. Failed to reimburse employees for required expenses in violation of California

1 Labor Code § 2802;

2 10. Discrimination and retaliation in violation of FEHA;

3 11. Failed to prevent discrimination, harassment, and/or retaliation in violation of
4 FEHA;

5 12. Failed to engage in the interactive process in violation of California Government
6 Code § 12940(n);

7 13. Failed to provide reasonable accommodation in violation of California
8 Government Code § 12940(m); and,

9 14. Wrongful termination in violation of public policy.

10 D. On January 10, 2020, plaintiff Miller filed a First Amended Complaint adding a claim
11 under the Private Attorney General Act, Cal. Labor Code §§ 2698, et seq. (“PAGA”) in the Miller
12 Action.

13 E. On January 13, 2020, Defendant filed a general denial along with 35 affirmative defenses
14 to the Complaint in the Miller Action.

15 F. On February 24, 2020, Defendant filed a general denial along with 37 affirmative
16 defenses to the First Amended Complaint in the Miller Action.

17 G. On May 27, 2020, the Parties participated in an all-day mediation with David A. Rotman,
18 Esq., a respected mediator of wage and hour class actions. Following the mediation, each side,
19 represented by its respective counsel, were able to agree to settle the Action based on a mediator’s
20 proposal which was memorialized in the form of a Memorandum of Understanding. This Agreement
21 replaces and supersedes the Memorandum of Understanding and any other agreements, understandings,
22 or representations between the Parties.

23 H. On June 5, 2020, plaintiffs Rosa Maria Garcia and Jennifer Horton filed a First Amended
24 Complaint in the Garcia Action.

25 I. This Agreement represents a compromise and settlement of highly disputed claims.
26 Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims
27 in the Action of Plaintiffs or the Class have merit or that Defendant bears any liability to Plaintiffs or the
28 Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant’s defenses in

1 the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement
2 only. If for any reason the settlement does not become effective, Defendant reserves the right to contest
3 certification of any class for any reason and reserves all available defenses to the claims in the Action.

4 **III. Funding of the Class Settlement Amount.**

5 Within fourteen (14) calendar days after the Effective Date of the Settlement, Defendant will
6 make a one-time deposit of all approved and claimed amounts from the Class Settlement Amount into a
7 Qualified Settlement Account to be established by the Settlement Administrator. Within fourteen (14)
8 calendar days of the funding of the Settlement, the Settlement Administrator will issue payments to: (a)
9 Class Members; (b) the Labor and Workforce Development Agency (LWDA); (c) Plaintiff; and (d)
10 Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved
11 services performed in connection with the Settlement. Defendant has no obligation to deposit such
12 funds prior to the deadline set forth herein.

13 **IV. Labor and Workforce Development Agency Payment.**

14 Subject to Court approval, the Parties agree that \$100,000 of the Class Settlement Amount will
15 be designated for satisfaction of Plaintiff's and Class Members' PAGA claims (the "PAGA Settlement
16 Amount"). Pursuant to the PAGA, \$75,000 (75%) of the PAGA Settlement Amount will be paid to the
17 LWDA and \$25,000 (25%) of the PAGA Settlement Amount will be included in the Net Settlement
18 Amount for distribution to the Class Members based upon their respective workweeks worked during
19 the PAGA Period. If the Court approves a PAGA Settlement Amount of less than \$100,000, the
20 remainder will be retained in the Net Settlement Amount for distribution to Class Members.

21 **V. Individual Settlement Payment Calculations.**

22 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
23 Amount based on the number of workweeks that a Class Member worked during the Class Period.
24 Specific calculations of Individual Settlement Payments will be made as follows:

25 Defendant will calculate the total number of weeks worked by each Class Member ("Individual
26 Workweeks") and the total number of weeks worked by all Class Members ("Class Workweeks")
27 during the Class Period.
28

1 To determine each Class Member's Individual Settlement Payment, the Settlement Administrator
2 will use the following formula: Individual Settlement Payment = (Individual Workweeks ÷ Class
3 Workweeks) × Net Settlement Amount.

4
5 The Individual Settlement Payment will be reduced by any required deductions for each Class
6 Member as set forth herein, including employee-side tax withholdings or deductions.

7 The Individual Settlement Payments made to Class Members under this Settlement, and any
8 other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits
9 under any benefit plans to which any Class Members may be eligible, including, but not limited to,
10 profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
11 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement
12 will not affect any rights, contributions, or amounts to which any Class Members may be entitled under
13 any benefit plans.

14 **VI. Effect of Request for Exclusion.**

15 Class Members who submit a valid Request for Exclusion will receive no Individual Settlement
16 Payments and their Requests for Exclusion will reduce neither the Gross Settlement Amount nor the Net
17 Settlement Amount. Their respective Individual Settlement Payments will remain a part of the Net
18 Settlement Amount for distribution to Class Members who do not submit valid Requests for Exclusion
19 on a *pro rata* basis relative to their Individual Settlement Shares.

20 **VII. Settlement Administration Process.**

21 1. The Parties agree to cooperate in the administration of the Settlement and to make all
22 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
23 Settlement. The Settlement Administrator will provide the following services:

- 24 a. Establish and maintain a Qualified Settlement Account.
- 25 b. Calculate the Individual Settlement Payment each Class Member is eligible to
26 receive.
- 27 c. Translate the Notice Packet into Spanish at the request of any Class Members.
- 28 d. Print and mail the Notice Packet.

- e. Establish and maintain a toll-free information telephone support line to assist Class Members who have questions regarding the Notice Packet.
- f. Conduct additional address searches for mailed Notice Packets that are returned as undeliverable.
- g. Process Requests for Exclusion, calculate Class Members' Individual Settlement Payment, field inquiries from Class Members, and administer any Requests for Exclusion. This service will include settlement proceeds calculation, printing and issuance of Settlement Payment Checks, and preparation of IRS W-2 and 1099 Tax Forms. Basic accounting for and payment of employee tax withholdings and forwarding all payroll taxes and penalties to the appropriate government authorities will also be included as part of this service.
- h. Issuing to Plaintiffs, Class Members, and Plaintiffs' Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.
- i. Provide declarations and/or other information to the Court as requested by the Parties and/or the Court.
- j. Provide weekly status reports to counsel for the Parties.

2. Within thirty (30) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

3. Using best efforts to mail it as soon as possible, and in no event later than twenty-one (21) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the last known mailing addresses identified in the Class List.

4. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the

1 Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt
2 to determine the correct address using a skip-trace, or other search using the name, address and/or Social
3 Security number of the Class Member involved, and will then perform a single re-mailing. Those Class
4 Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have between
5 the later of (a) an additional fifteen (15) calendar days or (b) the Response Deadline to postmark or fax a
6 Request for Exclusion or Notice of Objection to the Settlement. The Settlement Administrator will be
7 responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders,
8 and fee, as agreed to with the Parties and according to the following deadlines, to trace the mailing
9 address of any Class Member for whom a Notice Packet is returned by the U.S. Postal Service as
10 undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail;
11 performing address searches for all mail returned without a forwarding address using available email
12 addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and
13 promptly re-mailing to Class Members for whom new addresses are found. If the Notice Packet is re-
14 mailed, the Settlement Administrator will note for its own records and notify Defendant's Counsel of the
15 date and address of each such re-mailing as part of a weekly status report provided to the Parties.

16 5. All Class Members will be mailed a Notice Packet containing the forms attached as
17 Exhibit 1 as approved by the Court.

18 6. Class Members will have an opportunity to dispute the information provided in their
19 Notice Packets. To the extent Class Members dispute the number of workweeks to which they have
20 been credited or the amount of their Individual Settlement Payment, Class Members may produce
21 evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence
22 rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a
23 Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the
24 evidence submitted by the Class Member and will make the final decision as to the number of eligible
25 workweeks that should be applied and/or the Individual Settlement Payment to which the Class Member
26 may be entitled. The workweek dispute must be returned by mail or fax to the Settlement Administrator
27 at the specified address or facsimile number and postmarked or faxed on or before the Response
28 Deadline. The date of the postmark or fax receipt confirmation will be the exclusive means to determine

1 whether a workweek dispute has been timely submitted. All such disputes are to be resolved not later
2 than fourteen (14) calendar days after the Response Deadline.

3 7. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
4 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
5 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
6 receiving the defective submission to advise the Class Member that his or her submission is defective
7 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will
8 have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the
9 cure letter, whichever date is later, to postmark or fax a revised Request for Exclusion.

10 8. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
11 Settlement Agreement must sign and postmark or fax a written Request for Exclusion to the Settlement
12 Administrator within the Response Deadline. The date of the postmark on the return mailing envelope
13 or the fax receipt confirmation will be the exclusive means to determine whether a Request for
14 Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the Settlement
15 Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for
16 Exclusion that were timely submitted. Any Class Member who does not timely seek exclusion will be
17 bound by the terms of this Settlement Agreement.

18 9. The Settlement Administrator shall have its own Employer Identification Number under
19 Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in
20 calculating payroll withholdings for taxes and shall transmit the required employers' and employees'
21 share of the withholdings to the appropriate state and federal tax authorities. The Settlement
22 Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement
23 Fund ("QSF") under US Treasury Regulation section 468B-1.

24 **VIII. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

25 1. Defendant's Option to Nullify the Settlement Agreement. If five percent (5%) or more of
26 the Class Members opt out of the Settlement, Defendant, in its sole discretion, shall have the option of
27 nullifying the Settlement Agreement. Defendant shall give written notice to Class Counsel within ten
28 (10) calendar days after the Settlement Administrator informs the Parties that the opt out rate exceeds

1 five percent (5%). In such a case, the Parties and any funds to be awarded under this Settlement
2 Agreement shall be returned to their respective statuses as of the date and time immediately prior to the
3 execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement
4 had not been executed, except that any fees already incurred by the Settlement Administrator shall be
5 paid by Defendant. Defendant estimates that there are 3,844 non-unionized Class Members who
6 collectively worked 386,208 workweeks and 40,768 unionized Class Members who collectively worked
7 6,096,170 workweeks from December 6, 2015 to May 23, 2020. Defendant will provide a declaration
8 verifying the number of Class Members and workweeks worked during the Class Period.

9 2. Nullification of the Settlement Agreement. In the event: (i) the Court does not enter the
10 Preliminary Approval Order and approve the Released Settlement specified herein; (ii) the Court does
11 not finally approve the Settlement as provided herein; (iii) Defendant exercises its option to nullify the
12 Settlement Agreement based on an excessive number of opt-outs, as described in the above Section; or
13 (iv) the Settlement does not become final for any other reason (*e.g.*, an objection by the LWDA), this
14 Settlement Agreement shall be null and void. Any order or judgment entered by the Court in
15 furtherance of this Settlement Agreement shall be treated as void from the beginning, and the
16 Stipulations and Recitals contained herein shall be of no force or effect, and shall not be treated as an
17 admission by the Parties or their counsel. In such a case, the Parties and any funds to be awarded under
18 this Settlement Agreement shall be returned to their respective statuses as of the date and time
19 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in all
20 respects as if this Settlement Agreement had not been executed, except that any fees already incurred by
21 the Settlement Administrator shall be shared equally.

22 3. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Class Member
23 who does not affirmatively opt out of the Settlement Agreement by submitting a timely and valid
24 Request for Exclusion will be bound by all its terms.

25 **IX. Certification Reports Regarding Individual Settlement Payment Calculations.**

26 1. The Settlement Administrator will provide Defendant's counsel and Class Counsel a
27 weekly report which certifies: (a) the number of Class Members who have submitted valid Requests for
28 Exclusion; (b) any objections submitted to the Settlement along with a copy of any such objection; and

1 (c) whether any Class Member has submitted a challenge to any information contained in his/her Notice
2 Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
3 reports regarding the administration of the Settlement Agreement as needed or requested.

4 2. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator to
5 Class Members will be negotiable for one-hundred eighty (180) calendar days. If a check is returned to
6 the Settlement Administrator within one-hundred twenty (120) calendar days after the mailing, the
7 Settlement Administrator will make all reasonable efforts to re-mail it to the affected Class Member at
8 his or her correct address by use of available email addresses, phone numbers, social security numbers,
9 credit reports, LinkedIn and Facebook. If a Class Member's check is not cashed within 120 days after
10 its last mailing to the Class Member, the Settlement Administrator will also send the affected Class
11 Member a notice informing him or her that unless the check is cashed in the next 60 days, the check will
12 expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not
13 cashed. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become
14 null and void, and any monies remaining in the distribution account shall be distributed to the *cy pres*
15 recipient selected by the parties, California Rural Legal Assistance, consistent with California Code of
16 Civil Procedure § 384, subject to Court approval and the Class Member remains bound by the
17 Settlement. Pursuant to California Code of Civil Procedure § 384.4, the Parties and the attorneys
18 signing this Agreement hereby notify the Court that they and their respective firms have no relationship
19 with or connection to the *cy pres* recipient, California Rural Legal Assistance, that could create an
20 appearance of impropriety.

21 3. Certification of Completion. Within ten (10) calendar days of the completion of
22 administration of the Settlement, the Settlement Administrator will provide a written declaration under
23 oath to certify such completion to the Court and counsel for all Parties.

24 **X. Tax Treatment of Individual Settlement Payments.**

25 All Individual Settlement Payments will be allocated as follows: one-third (1/3) wages, one-third
26 (1/3) interest and one-third (1/3) penalties.

27 The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated
28 to non-wages will be reported on an IRS Form-1099 by the Settlement Administrator. The Gross

1 Individual Settlement Payments will be reduced by any required legal deductions for each Class
2 Member. All standard employee payroll deductions will be made for state and federal withholding
3 taxes, including any other applicable payroll deductions owed by the Class Members as a result of the
4 Wage Component, resulting in a net wage component. The Settlement Administrator will issue a check
5 and W-2 Form to each Class Member for the wage component. No withholding shall be made on the
6 penalty portions of the Gross Individual Settlement Payment. The Settlement Administrator will issue a
7 second check and IRS Form-1099 for the remaining penalty component. The Settlement Administrator
8 shall be responsible for issuing the payments and calculating and withholding all required state and
9 federal taxes. The Settlement Administrator shall determine the eligibility for, and the amounts of, any
10 Individual Settlement Payments under the terms of this Settlement Agreement. Any disputes not
11 resolved by the Settlement Administrator concerning the administration of the Settlement will be
12 resolved by the Court, under the laws of the State of California. Prior to any such involvement of the
13 Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of
14 involving the Court.

15 **XI. Administration of Taxes by the Settlement Administrator.**

16 1. Tax Liability. Class Counsel, Defendant and Defendant's Counsel make no
17 representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs
18 and Class Members are not relying on any statement, representation, or calculation by Defendant or by
19 the Settlement Administrator in this regard. Plaintiffs and Class Members understand and agree they
20 will be solely responsible for the payment of their share of any taxes and penalties assessed on the
21 payments described herein.

22 2. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT
23 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
24 TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
25 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
26 SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
27 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS
28 OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE

1 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
2 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10,
3 AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON
4 HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
5 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT,
6 (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
7 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
8 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
9 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
10 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
11 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
12 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
13 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
14 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
15 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
16 BY THIS SETTLEMENT AGREEMENT.

17 **XII. Release by Class Members.**

18 1. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
19 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
21 action or right herein released and discharged.

22 2. It is the desire of Plaintiffs, Class Members (except those who exclude themselves from
23 the Settlement), and Defendant to fully, finally, and forever settle, compromise, and discharge the
24 Released Claims. Upon the Final Approval by the Court of this Settlement Agreement, and except as to
25 such rights or claims as may be created by this Settlement Agreement, the Class Members shall fully
26 release and discharge the Released Parties from any and all Released Claims for the entire Class Period.
27 This release shall be binding on all Class Members who have not timely submitted a valid and complete
28 Request for Exclusion, including each of their respective attorneys, agents, spouses, executors,

1 representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the
2 Released Parties, who shall have no further or other liability or obligation to any Class Member with
3 respect to the Released Settlement, except as expressly provided herein.

4 **XIII. Materiality of Terms.**

5 1. The Court's approval of Class Representative Enhancement Payments, Attorneys' Fees
6 and Costs, and the LWDA Payment are not material terms of this Agreement. If the Court approves only
7 a lesser amount of these payments, then the other terms of this Agreement shall still remain in effect and
8 the difference will remain part of the Net Settlement Amount.

9 2. Except as otherwise stated herein, each substantive term of this Agreement is material
10 and has been relied upon by the Parties in entering into this Agreement. Any failure by the Court to fully
11 and completely approve the material terms of this Settlement Agreement will result in this Settlement
12 Agreement entered into by the Parties, and all obligations under this Settlement Agreement, being
13 nullified and voided. Upon such failure, any order or judgment entered by the Court in furtherance of
14 this Settlement Agreement shall be treated as void from the beginning, and the Stipulations and Recitals
15 contained herein shall be of no force or effect and shall not be treated as an admission by the Parties or
16 their counsel. In such a case, the Parties and any funds to be awarded under this Settlement Agreement
17 shall be returned to their respective statuses as of the date and time immediately prior to the execution of
18 this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement
19 had not been executed, except that any fees already incurred by the Settlement Administrator shall be
20 paid equally by both Parties.

21 **XIV. Preliminary Approval Hearing.**

22 1. Plaintiffs will obtain a hearing before the Court to request Preliminary Approval of the
23 Settlement Agreement and the entry of a Preliminary Approval Order for: (a) conditional certification of
24 the Settlement Class for settlement purposes only, (b) Preliminary Approval of the proposed Settlement
25 Agreement, and (c) setting a date for a Final Approval/Settlement Fairness Hearing.

26 2. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
27 Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiffs will
28 submit this Settlement Agreement and will include the proposed Notice Packet.

1 3. Class Counsel will be responsible for drafting all documents necessary to obtain
2 Preliminary Approval.

3 4. At the hearing before the Court to request Preliminary Approval, the Parties will jointly
4 appear, support the granting of the motion, and submit a proposed Order Granting Preliminary Approval
5 of the Settlement.

6 5. Should the Court decline to preliminarily approve material aspects of the Settlement
7 (including but not limited to the scope of release to be granted by Class Members or the binding effect
8 of the Settlement on Class Members who do not submit valid Requests for Exclusion), the Parties shall
9 work together in good faith to address any concerns raised by the Court and propose a revised
10 Settlement for the Court's approval.

11 **XV. Final Settlement Approval Hearing and Entry of Judgment.**

12 1. Upon expiration of the Response Deadline, and with the Court's permission, a Final
13 Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the
14 Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement Payments;
15 (b) the LWDA Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative Enhancement
16 Payments; and (e) all Settlement Administration Costs.

17 2. The Final Approval/Settlement Fairness Hearing will be held no later than forty-five (45)
18 calendar days after the Response Deadline.

19 3. Class Counsel will be responsible for drafting all documents necessary to obtain Final
20 Approval. Class Counsel will also be responsible for drafting the Attorneys' Fees and Costs application
21 to be heard at the Final Approval/Settlement Fairness Hearing.

22 4. At the hearing before the Court to request Final Approval, the Parties will jointly appear,
23 support the granting of the motion, and submit a proposed Final Approval Order and Judgment.

24 **XVI. Judgment and Continued Jurisdiction.**

25 1. The Court shall retain jurisdiction under California Code of Civil Procedure section 664.6
26 with respect to the interpretation, implementation, and enforcement of the terms of this Settlement
27 Agreement and all orders and judgments entered in connection therewith, and the Parties and their
28 counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and

1 enforcing the Settlement embodied in this Settlement Agreement and all orders and judgments entered in
2 connection therewith.

3 **XVII. Other Provisions.**

4 1. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set
5 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
6 Any Exhibits to this Settlement are an integral part of the Settlement.

7 2. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
8 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
9 may be deemed binding on the Parties.

10 3. Amendment or Modification. This Settlement Agreement may be amended or modified
11 only by a written instrument signed by counsel for all Parties or their successors-in-interest and
12 approved by the Court. If the Court requires certain non-material modifications to be made to this
13 Settlement Agreement as a condition for granting approval, then the parties agree that their counsel can
14 enter into a stipulation to modify this agreement to conform it to the Court's Order and that signatures of
15 counsel shall suffice for such an amendment.

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

25 5. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
26 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

27 6. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
28 will be governed by and interpreted according to the laws of the State of California.

1 7. Execution and Counterparts. This Agreement may be executed in one or more
2 counterparts by facsimile, electronic signature, DocuSign or email which for purposes of this Agreement
3 shall be accepted as an original. All executed counterparts and each of them will be deemed to be one
4 and the same instrument. Any executed counterpart will be admissible in evidence to prove the
5 existence and contents of this Agreement.

6 8. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
7 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
8 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
9 account all relevant factors, present and potential. The Parties further acknowledge that they are each
10 represented by competent counsel and that they have had an opportunity to consult with their counsel
11 regarding the fairness and reasonableness of this Settlement.

12 9. Invalidity of Any Provision. Before declaring any provision of this Settlement
13 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
14 possible consistent with applicable precedents so as to define all provisions of this Settlement
15 Agreement valid and enforceable.

16 10. Waiver of Certain Appeals. Provided that the Judgment is consistent with the terms and
17 conditions of this Agreement, Class Members who did not timely submit an objection to the Settlement,
18 Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment,
19 including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited
20 to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The waiver of appeal
21 does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment
22 proceedings. 11. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.

23 If, after a notice of appeal, a petition for review, or a petition for certiorari, or any other motion, petition,
24 or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a
25 material modification to the Settlement (including, but not limited to, the scope of release to be granted
26 by Class Members), and that Court's decision is not completely reversed and the Judgment is not fully
27 affirmed on review by a higher Court, then the Parties shall work together in good faith to address any
28 concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court

1 not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially
2 modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of
3 the Class Representative Enhancement Payments or the Attorneys' Fees and Costs will not constitute a
4 vacation, reversal, or material modification of the Judgment within the meaning of this paragraph,
5 provided that Defendant's obligation to make payments under this Settlement will remain limited by the
6 Gross Settlement Amount.

7 12. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
8 class certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved,
9 the stipulation to certification will be void. The Parties further agree that certification for purposes of
10 the Settlement is not an admission that class action certification is proper under the standards applied to
11 contested certification motions and that this Settlement Agreement will not be admissible in this or any
12 other proceeding as evidence that either: (a) a class action should be certified or (b) Defendant is liable
13 to Plaintiffs or any Class Member, other than according to the Settlement's terms.

14 13. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve
15 the dispute that has arisen between them and to avoid the burden, expense, and risk of continued
16 litigation. In entering into this Settlement Agreement, Defendant does not admit, and specifically denies,
17 that it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
18 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any
19 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in
20 any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any
21 of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an
22 admission or concession by Defendant of any such violations or failures to comply with any applicable
23 law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this
24 Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any
25 action or proceeding to establish any liability or admission on the part of Defendant or to establish the
26 existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or
27 other applicable law.

28 14. Captions. The captions and section numbers in this Settlement Agreement are inserted

1 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
2 provisions of this Settlement Agreement.

3 15. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
4 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
5 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

6 16. Enforcement Action. If one or more of the Parties institutes any legal action or other
7 proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare
8 rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover
9 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees
10 incurred in connection with any enforcement actions.

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

16 18. Representation by Counsel. The Parties acknowledge that they have been represented by
17 counsel throughout all negotiations that preceded the execution of this Settlement Agreement and that
18 this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in
19 full. Plaintiff

20 19. All Terms Subject to Final Court Approval. All amounts and procedures described in
21 this Settlement Agreement herein will be subject to final Court approval.

22 20. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
23 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
24 Settlement Agreement.

25 21. Binding Agreement. The Parties warrant that they understand and have full authority to
26 enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and binding on
27 all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its
28 terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under

1 federal or state law. Plaintiffs, and not their respective representative(s), must personally execute this
2 Settlement Agreement.

3 22. No Prior Assignments or Undisclosed Liens. Plaintiffs and Class Counsel represent that
4 they have not assigned, transferred, conveyed, or otherwise disposed of any Released Claim or claim to
5 attorneys' fees and costs award to be paid under this Agreement. Plaintiffs and Class Counsel further
6 represent and warrant that there are not any liens or claims against any amount that Defendant is to pay
7 under this Agreement. Plaintiffs and Class Counsel agree to defend, to indemnify, and to hold
8 Defendant harmless from any liability, losses, claims, damages, costs, or expenses, including reasonable
9 attorneys' fees, resulting from a breach of these representations or from any lien or assignment.

10 23. Confidential Information. Class Counsel will destroy all confidential documents and
11 information provided by Defendant within 60 calendar days after the completion of the administration of
12 this Agreement. Class Counsel further agree that none of the information provided by Defendant shall
13 be used for any purpose other than prosecution of this Action.

14 24. Publicity. Neither Plaintiffs nor Class Counsel will publicize the Settlement in any way
15 prior to preliminary approval. Nothing in this Stipulation shall preclude Class Counsel from
16 communicating with members of the Settlement Class after preliminary approval, and after preliminary
17 approval Class Counsel are permitted to post court-filed documents on their website for viewing by the
18 Settlement Class.

19 25. Headings. The descriptive heading of any section or paragraph of this Agreement is
20 inserted for convenience of reference only and does not constitute a part of this Agreement.

21 26. Notice. All notices, demands or other communications given under this Agreement will
22 be in writing and deemed to have been duly given upon being sent, via email, to the following
23 individuals, provided that the recipients confirm receipt within two business days:

24 To Plaintiffs and the Class:

25 Norman B. Blumenthal
26 Kyle R. Nordrehaug
27 Blumenthal Nordrehaug Bhowmik De Blouw LLP
28 2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223

1 Fax: (858) 551-1232
2 E-Mail: norm@bamlawca.com
3 kyle@bamlawca.com

4 Larry W. Lee
5 Kristen M. Agnew
6 Nicholas Rosenthal
7 Diversity Law Group, P.C.
8 515 S. Figueroa Street, Suite 1250
9 Los Angeles, CA 90071
10 Tel.: (213) 488-6555
11 Fax: (213) 488-6554
12 E-Mail: lwlee@diversitylaw.com
13 kagnew@diversitylaw.com
14 nrosenthal@diversitylaw.com

15 William L. Marder
16 Polaris Law Group, LLP
17 501 San Benito Street, Suite 200
18 Hollister, CA 95023
19 Tel.: (831) 531-4214
20 Fax: (831) 634-0333
21 E-Mail: bill@polarislawgroup.com

22 To Defendant:

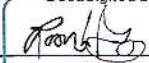
23 Christian J. Rowley
24 Kerry Friedrichs
25 Parnian Vafaenia
26 560 Mission Street, 31st Floor
27 San Francisco, CA 94105
28 Tel.: (415) 397-2823
Fax: (415) 397-8549
E-Mail: Crowley@seyfarth.com
kfriedrichs@seyfarth.com
pvafaenia@seyfarth.com

27. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with David A. Rotman on May 27, 2020 until the earlier of the Effective Date or the reopening of renewed discovery.

SO AGREED:

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Dated: November ²⁴ __, 2020

DocuSigned by:


Plaintiff Rosa Maria Garcia

Dated: November __, 2020

Plaintiff Jennifer Horton

Dated: November __, 2020

Plaintiff Brittany Miller

Dated: November __, 2020

By _____
For The Permanente Medical Group, Inc

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Dated: November __, 2020

Plaintiff Rosa Maria Garcia

Dated: November 30, 2020

DocuSigned by:
Jennifer Horton

Plaintiff Jennifer Horton

Dated: November __, 2020

Plaintiff Brittany Miller

Dated: November __, 2020

By _____
For The Permanente Medical Group, Inc

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Dated: November __, 2020

Plaintiff Rosa Maria Garcia

Dated: November __, 2020

Plaintiff Jennifer Horton

Dated: November 23, 2020



Brittany Miller (Nov 23, 2020 16:20 PST)
Plaintiff Brittany Miller

Dated: November __, 2020

By _____
For The Permanente Medical Group, Inc

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Dated: November __, 2020

Plaintiff Rosa Maria Garcia

Dated: November __, 2020

Plaintiff Jennifer Horton

Dated: November __, 2020

Plaintiff Brittany Miller

Dated: December 31, 2020

By 
For The Permanente Medical Group, Inc

1 **Approval As To Form And Content By Counsel:**

2
3 DATED: November 23, 2020

Respectfully submitted,

4 BLUMENTHAL NORDREHAUG BHOWMIK
5 DE BLOUW LLP

6
7 By: 

8 Norman Blumenthal
Attorneys for Plaintiffs and Proposed Classes

9 DATED: November __, 2020

Respectfully submitted,

10 DIVERSITY LAW GROUP, P.C.

11
12 By: _____

13 Larry Lee
Attorneys for Plaintiffs and Proposed Classes

14
15 DATED: November __, 2020

Respectfully submitted,

16 POLARIS LAW GROUP LLP

17
18 By: _____

19 William Marder
Attorneys for Plaintiffs and Proposed Classes

20
21 DATED: November __, 2020

Respectfully submitted,

22 SEYFARTH SHAW LLP

23
24 By _____

25 Christian J. Rowley
Kerry M. Friedrichs
Attorneys for Defendant

26 THE PERMANENTE MEDICAL GROUP, INC.
27
28

1 **Approval As To Form And Content By Counsel:**

2

3 DATED: November __, 2020

Respectfully submitted,

4

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

5

6

By: _____
Norman Blumenthal
Attorneys for Plaintiffs and Proposed Classes

7

8

9 DATED: ~~November~~ ^{December} 1, 2020


Respectfully submitted,

10

DIVERSITY LAW GROUP, P.C.

11

12

By: 
Larry Lee
Attorneys for Plaintiffs and Proposed Classes

13

14

15 DATED: November 24, 2020


Respectfully submitted,

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POLARIS LAW GROUP LLP

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By: 
William Marder
Attorneys for Plaintiffs and Proposed Classes

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21 DATED: November __, 2020

Respectfully submitted,

22

SEYFARTH SHAW LLP

23

24

By _____
Christian J. Rowley
Kerry M. Friedrichs
Attorneys for Defendant

25

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THE PERMANENTE MEDICAL GROUP, INC.

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1 **Approval As To Form And Content By Counsel:**

2
3 DATED: November __, 2020

Respectfully submitted,

4 BLUMENTHAL NORDREHAUG BHOWMIK
5 DE BLOUW LLP

6
7 By: _____
8 Norman Blumenthal
Attorneys for Plaintiffs and Proposed Classes

9 DATED: November __, 2020

Respectfully submitted,

10 DIVERSITY LAW GROUP, P.C.

11
12 By: _____
13 Larry Lee
14 Attorneys for Plaintiffs and Proposed Classes

15 DATED: November __, 2020

Respectfully submitted,

16 POLARIS LAW GROUP LLP

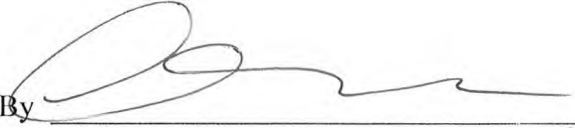
17
18 By: _____
19 William Marder
Attorneys for Plaintiffs and Proposed Classes

20 DATED: November __, 2020

21 *December 31, 2020*

Respectfully submitted,

22 SEYFARTH SHAW LLP

23
24 By:  _____
25 Christian J. Rowley
26 Kerry M. Friedrichs
Attorneys for Defendant

27 THE PERMANENTE MEDICAL GROUP, INC.