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**UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF CALIFORNIA**

MARGARITA ERGUERA, an individual on  
behalf of herself and others similarly situated,

Plaintiff,

v.

CMG CIT ACQUISITION, LLC; CIRCHARO  
ACQUISITION LLC; and DOES 1 to 10,  
inclusive,

Defendants.

Case No. 1:20-cv-01744-JLT-BAK

**JOINT STIPULATION AND  
SETTLEMENT AGREEMENT**

1 This Joint Stipulation and Settlement Agreement (hereafter “Stipulation,” “Agreement” or  
2 “Settlement”) is entered into by and between Defendant CMG CIT Acquisition, LLC (hereafter  
3 “Defendant” or “CMG”) on the one hand, and Plaintiff Margarita Erguera (hereafter “Plaintiff”), on  
4 behalf of herself and each member of the settlement class as defined herein, on the other hand  
5 (collectively “the Parties”), with respect to the lawsuit *Erguera v. CMG CIT Acquisition, LLC, et al.*,  
6 Case No. 1:20-cv-01744-JLT-BAK (E.D. Cal.) currently pending in the United States District Court  
7 for the Eastern District of California (hereafter “the Action”).

8 WHEREAS, the Action was initially filed on December 8, 2020, and the operative Complaint  
9 asserts putative Rule 23 class claims under California law for unpaid overtime (Cal. Labor Code §§  
10 510, 1194), unfair business practices (Cal. Bus. & Prof. Code § 17200, et seq.), and waiting time  
11 penalties (Cal. Labor Code § 203), as well as a putative collective claim under the federal Fair Labor  
12 Standards Act (“FLSA”) for unpaid overtime under the Fair Labor Standards Act (“FLSA”) (29  
13 U.S.C. § 201, et seq.);

14 WHEREAS, in connection with the California claims, the Complaint seeks to certify a Rule  
15 23 California class and in connection with the FLSA claim the Complaint seeks to certify a  
16 nationwide FLSA collective;

17 WHEREAS, on November 19, 2021, Plaintiff filed a motion to certify a Rule 23 class of  
18 California employees in connection with the claims asserted under California law, but did *not* move  
19 to certify a FLSA collective in connection with the FLSA claim;

20 WHEREAS, prior to a ruling on Plaintiff’s motion for class certification, the parties  
21 participated in a full day private mediation with Louis Marlin, Esq. and, following extensive arm-  
22 length negotiations and discovery, have reached an agreement resolve the Action;

23 NOW, THEREFORE, IT IS HEREBY STIPULATED THAT, subject to Court approval of  
24 this Settlement, the Action shall be compromised and settled pursuant to the following terms and  
25 conditions:

26 **1. Effective Date.**

27 This Settlement shall become effective on the latest of the following dates: (a) if no objections  
28 to the Settlement are filed, the date of entry of a Judgment granting final approval of this Settlement;

1 (b) if one or more objections to the Settlement are filed and not withdrawn, the date on which the  
2 time for filing a notice of appeal of the Court’s Judgment granting final approval of the Settlement  
3 has expired with no notice of appeal having been filed; or (c) if a notice of appeal is filed, the date of  
4 termination of the appeal (including any requests for rehearing) resulting in the final judicial approval  
5 of the Settlement (hereafter “Effective Date”).

6 **2. Certification of Rule 23 California Settlement Class**

7 Solely for the purpose of effectuating this Settlement, the Parties hereby stipulate to  
8 conditional certification, pursuant to Rule 23, of the following class:

9 All non-exempt hourly healthcare professionals employed by Defendant in California  
10 who, at any time from December 8, 2016 through September 30, 2022, worked  
11 overtime and received a per diem allowance (hereafter “California Rule 23 Class”).

12 **3. Dismissal of FLSA Claim Without Prejudice**

13 In connection with the Settlement, the Parties are not seeking certification of, or a release on  
14 behalf of, any FLSA collective. The FLSA claim alleged in the Complaint shall instead be dismissed  
15 without prejudice.

16 **4. Settlement Administrator**

17 The Parties designate Phoenix Class Action Administration Solutions (hereafter “Settlement  
18 Administrator”) to process this Settlement. The Settlement Administrator will administer the  
19 Settlement including, but not limited to, distributing notice of the Settlement, processing opt-outs,  
20 objections, disputes, and inquiries regarding the Settlement, calculating and directing the  
21 disbursements of payments under the Settlement, issuing appropriate tax forms for disbursements  
22 under the Settlement, and calculating and processing required tax withholdings, if any, on such  
23 disbursements. The Settlement Administrator shall provide the Parties with weekly reports regarding  
24 the status of mailings, returns, and re-mailings, objections received, and disputes regarding the  
25 calculation of overtime hours. The Settlement Administrator shall not disburse funds except as  
26 provided herein, as ordered by the Court, or as agreed upon in writing by counsel for both Parties.  
27 Settlement administration expenses shall not exceed \$15,000.

28

1           **5.       Release of Claims**

2           **a.       Class Release:** As of the Effective Date, all members of the California Rule  
3 Rule 23 Class who do not timely request exclusion from the Settlement, shall release CMG CIT  
4 Acquisition, LLC, its predecessor Circharo Acquisitions LLC, along with any parent, subsidiary,  
5 affiliate, predecessor or successor, agents, employees, officers, and directors (“Releasees”)  
6 throughout the class period from any and all debts, liabilities, costs, demands, obligations, claims,  
7 causes of action, or complaints arising during the class period that were pled on behalf of the California  
8 Rule 23 Class in the operative Complaint, or which could have been pled on behalf of the California  
9 Rule 23 Class based on the same facts as pled in the operative Complaint. This includes claims, to the  
10 extent based on the same facts as pled in the operative Complaint, relating to the alleged failure of the  
11 Defendant to provide any of the California Rule 23 Class Members with compensation as required by  
12 law relating to wages, claims for overtime hours worked, itemized wage statement/pay stub violations,  
13 civil penalties, PAGA penalties, or waiting-time penalties as required by law or regulations, the failure  
14 to pay penalties, alleged violations of California Labor Code as well as the relevant Industrial Welfare  
15 Commission Wage Order(s), Title 8 of the California Code of Regulations, California Business and  
16 Professions Code Sections 17200, et seq., as well as claims for interest, costs, attorneys’ fees,  
17 compensatory damages, and all claims for restitution and other equitable relief, injunctive relief,  
18 liquidated damages, and any other remedies owed or available under the law based on the facts set forth  
19 in the operative Complaint.

20           **b.       Plaintiff’s Individual General Release:** As of the Effective Date, Plaintiff, in  
21 her individual capacity only, shall irrevocably and unconditionally release, acquit, and discharge the  
22 Releasees from any and all complaints, claims, liabilities, obligations, promises, agreements,  
23 controversies, damages, costs, losses, debts and expenses (including attorneys’ fees and costs actually  
24 incurred), of any nature whatsoever, known or unknown, to the fullest extent permitted by law,  
25 including a waiver of California Civil Code §1542. With respect to this general release, Plaintiff  
26 stipulates and agrees that she shall be deemed to have expressly waived and relinquished, to the fullest  
27 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil  
28

1 Code, or any other similar provision under state or federal law as to the generally released claims.

2 Section 1542 provides as follows:

3  
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
7 AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
9 PARTY.

8 **6. Gross Settlement Fund**

9 Pursuant to this Settlement, Defendant shall pay a non-reversionary gross settlement amount  
10 of Nine Hundred Thousand Dollars (\$900,000) (hereafter “Gross Settlement Fund”). In the event  
11 that the aggregate number of California Rule 23 Class members exceeds 800 individuals, the amount  
12 of the Gross Settlement Fund shall be increased pro-rata for each additional class member.

13 The Gross Settlement Fund is the total and non-reversionary amount payable pursuant to this  
14 Settlement by Defendant, and includes, without limitation, attorneys’ fees and costs to Plaintiff’s  
15 counsel as determined by the Court, individual settlement payments to the California Rule 23 Class,  
16 any service award to Plaintiff as determined by the Court, and the Settlement Administrator’s fees  
17 and costs. Employer-side payroll taxes owing on payment to the California Rule 23 Class shall not  
18 be deducted from the Gross Settlement Fund and shall be paid separately by Defendant.

19 **7. Deductions from Gross Settlement Fund**

20 Subject to Court approval, the following deductions will be made from the Gross Settlement  
21 Fund:

- 22 (1) attorneys’ fees and litigation costs to Plaintiffs’ counsel, Hayes Pawlenko LLP  
23 (hereafter “Class Counsel”), in an amount to be determined solely by the Court  
24 pursuant to an application by Class Counsel (hereafter “Class Counsel Fees &  
25 Costs”);  
26 (2) settlement administration fees and costs to the Settlement Administrator in an amount  
27 not to exceed Fifteen Thousand Dollars (\$15,000) (hereafter “Settlement  
28 Administration Costs”);

1 and

2 (3) a service award to Plaintiff in an amount to be determined solely by the Court  
3 pursuant to an application by Plaintiff (hereafter “Service Award”).

4 The balance of the Gross Settlement Fund after the Court-approved deductions (hereafter “Net  
5 Settlement Fund”) shall be distributed to members of the California Rule 23 Class who did not opt-  
6 out of the Settlement.

7 **8. Formula for Determining Individual Settlement Class Member Payments**

8 In order to receive a payment from the Net Settlement Fund, a member of the California  
9 Rule 23 Class need not submit a claim form, but rather, will automatically be sent an individual  
10 settlement payment. The Net Settlement Fund shall be allocated pro rata among members of the  
11 California Rule 23 Class based on the number of overtime hours Defendant’s pay records credit each  
12 member with having worked during the class period (hereafter “Qualifying Overtime Hours”). The  
13 Net Settlement Fund shall first be divided by the total number of Qualifying Overtime Hours worked  
14 by the entire California Rule 23 Class to determine the monetary value of each Qualifying Overtime  
15 Hour. Each individual payment to a member of the class will then be calculated by multiplying that  
16 individual’s number of Qualifying Overtime Hours by the monetary value of each Qualifying  
17 Overtime Hour. Mathematically, an individual’s settlement payment will be calculated as follows:  
18 (Net Settlement Fund ÷ Qualifying Overtime Hours of entire class) x (Qualifying Overtime Hours  
19 worked by the individual) = individual settlement payment.

20 **9. Taxes**

21 The payment of Class Counsel Fees & Costs, Settlement Administration Expenses, and the  
22 Service Award shall be reported on an IRS Form 1099 and will not be subject to withholdings.

23 For the purpose of calculating applicable tax withholdings for the individual payments to  
24 members of the Settlement Class, the Parties agree that one-third (1/3) of such settlement payments  
25 will be treated as wages and two-thirds (2/3) will be treated as penalties and interest. The portion  
26 treated as wages will be subject to regular and/or applicable payroll and income tax withholdings (for  
27 the employee portion of withholdings only), and will be reported on an IRS Form W-2. The portion  
28 treated as penalties and interest will not be subject to regular and/or applicable payroll and income

1 tax withholdings, and will be reported on an IRS Form 1099. Defendant's share of employer-side  
2 payroll taxes on the individual settlement payments will be paid by Defendant with funds separate  
3 and apart from the Gross Settlement Fund.

4 The Settlement Administrator shall be responsible for issuing the aforementioned tax forms,  
5 calculating applicable withholdings, and transmitting the required employee withholdings to the  
6 appropriate state and federal tax authorities. Within five days of calculating the payroll withholdings,  
7 the Settlement Administrator shall notify Defendant of the amount of employer-side payroll taxes  
8 that Defendant will need to separately pay to the appropriate state and federal tax authorities.

9 **10. Circular 230 Disclaimer**

10 The Parties agree that: (1) no provision of this Agreement, and no written communications or  
11 disclosure between or among the Parties or their attorneys and other advisers, is or was intended to  
12 be, nor shall any such communication or disclosure constitute or be construed or be relied upon as,  
13 tax advice within the meaning of the United States Treasury Department Circular 230 (31 CFR Part  
14 10, as amended); (2) the Parties (a) have relied exclusively upon their own independent legal and tax  
15 advisers for advice (including tax advice) in connection with this Agreement, (b) have not entered  
16 into this Agreement based upon the recommendation of any other party or any attorney or advisor to  
17 any other party, and (c) are not entitled to rely upon any communication or disclosure by any attorney  
18 or adviser to any other party to avoid any tax or tax penalty; and (3) no attorney or adviser to any  
19 party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's  
20 tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the party  
21 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this  
22 Agreement.

23 **11. Settlement Approval & Notice Procedure**

24 **a. Preliminary Approval of the Settlement.**

25 After the Parties execute this Settlement, Plaintiff's counsel shall submit the Settlement to the  
26 Court pursuant to a motion for preliminary approval seeking (1) preliminary approval the Settlement,  
27 (2) conditional certification of the California Rule 23 Class, (3) approval of the proposed notice to  
28 the California Rule 23 Class in the form attached hereto as Exhibit A (hereafter "Settlement Notice"),

1 (4) approval of the proposed procedure for notifying the California Rule 23 Settlement Class of the  
2 Settlement, and (5) the scheduling of a final fairness hearing. Plaintiff’s counsel will provide  
3 Defendant’s counsel with a draft of the motion for preliminary approval prior to filing the motion.

4 **b. Notice of Settlement by Mail.**

5 No later than fifteen (15) days after the Court enters an Order granting preliminary approval  
6 of the Settlement, Defendant shall provide to the Settlement Administrator a list containing the names,  
7 last known addresses, dates of employment, social security numbers, and Qualifying Overtime Hours  
8 for each member of the California Rule 23 Class (collectively “Employee Data”). Using the  
9 Employee Data, the Settlement Administrator shall calculate the estimated settlement payment to  
10 which each member of the California Rule 23 Class is entitled pursuant to the formula described  
11 above. Within fifteen (15) days of receipt from Defendant of the Employee Data, the Settlement  
12 Administrator shall mail the Settlement Notice, via First-Class Mail using the United States Postal  
13 Service, to the most recent address known for each member of the California Rule 23 Class. Before  
14 mailing the Settlement Notice, the Settlement Administrator shall review the National Change of  
15 Address Registry for all members of the California Rule 23 Class and/or conduct a skip trace to  
16 determine the most up-to-date addresses.

17 If any Settlement Notices are returned with a forwarding address, the Settlement  
18 Administrator shall re-mail the Settlement Notice to the forwarding address. In the event that a  
19 Settlement Notice is returned without a forwarding address, the Settlement Administrator shall, via  
20 skip-tracing, seek an address correction for such individual, and, if an updated address is identified,  
21 send the Settlement Notice to the new address within seven (7) days. The Settlement Administrator  
22 may conduct any investigation it deems economically reasonable and consistent with industry  
23 practice to determine the correct address of any member of the Settlement Class.

24 **c. Procedure for Opting-Out of the Settlement.**

25 Members of the California Rule 23 Class who wish to exclude themselves from the Settlement  
26 shall mail to the Settlement Administrator, not later than forty-five (45) days after the Settlement  
27 Administrator mails the Settlement Notice (hereafter “Response Deadline”), a signed request for  
28 exclusion form (“Request for Exclusion”) which is included as part of the Settlement Notice attached



1 hereto as Exhibit A. To be valid, the Request for Exclusion must comply with the instructions in the  
2 Class Notice and be postmarked on or before the Response Deadline.

3 The Settlement Notice shall advise that, to be considered valid, a Request for Exclusion  
4 should: (1) include the individual's full name and address; (2) include the last four digits of the  
5 individual's Social Security Number; and (3) be postmarked to the Settlement Administrator by the  
6 Response Deadline, the date of which shall be stated in the Settlement Notice.

7 An individual who timely returns a valid Request for Exclusion will be deemed to have opted-  
8 out and will not participate in or be bound by the Settlement. Persons who submit a valid and timely  
9 Request for Exclusion shall not be permitted to object to the Settlement.

10 **d. Procedure for Objecting to the Settlement.**

11 Members of the California Rule 23 Class shall have until the Response Deadline to submit an  
12 objection to the Settlement. To object, an individual must mail the Settlement Administrator a written  
13 objection, postmarked on or before the Response Deadline, stating the basis for the objection and  
14 include any supporting documents. The Settlement Administrator shall provide counsel for the  
15 Parties with complete copies of all objections received, including the postmark dates for each  
16 objection, within two business days of receipt. Plaintiff's counsel shall file all objections with the  
17 Court at the time of filing a motion for final approval. The Parties and their counsel agree that they  
18 will not solicit, encourage, or advise any individuals to object to the Settlement.

19 The Settlement Notice shall advise that, to be considered valid, an objection should: (1) be in  
20 writing; (2) include the objector's full name and address; (3) include the last four digits of the  
21 objector's Social Security Number; (4) state the basis for the objection and include any supporting  
22 documents; and (5) be postmarked to the Settlement Administrator by the Response Deadline, the  
23 date of which shall be stated in the Settlement Notice.

24 Members of the California Rule 23 Class who do not submit a timely objection to the  
25 Settlement shall be deemed to have waived any objections to the Settlement and shall be foreclosed  
26 from making any objection (whether by appeal or otherwise) to the Settlement, unless otherwise  
27 ordered by the Court.

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1                   **e. Procedure for Disputing Overtime Hours Calculation.**

2                   Members of the California Rule 23 Class shall have until the Response Deadline to dispute  
3 the number of Qualifying Overtime Hours allocated to them, which shall be stated in the Settlement  
4 Notice. The Settlement Administrator shall consider all such disputes, provided that, prior to the  
5 Dispute Deadline, the individual notifies the Settlement Administrator of the dispute and provides  
6 supporting documents. The Settlement Notice shall advise of the right to dispute the number of  
7 qualifying overtime hours and shall direct such disputes be made to the Settlement Administrator by  
8 the Response Deadline, the date of which shall be stated in the Settlement Notice. After consulting  
9 with Plaintiff’s Counsel and Defendant’s counsel, the Settlement Administrator shall have the final  
10 authority to resolve all disputes concerning the number of Qualifying Overtime Hours.

11                   **f. Declaration of Compliance**

12                   As soon as practicable, but no later than seven (7) calendar days following the Response  
13 Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration  
14 attesting to completion of the notice process set forth herein, including a list of the individuals, if  
15 any, who returned a timely and valid Request for Exclusion. The declaration shall be filed with the  
16 Court along with the papers requesting final approval of the Settlement.

17                   **g. Final Approval of the Settlement**

18                   Prior to the final fairness hearing, and consistent with any deadlines imposed by the Court,  
19 Plaintiffs’ counsel shall file a motion for final approval of the Settlement and request the entry of an  
20 order and judgment finally approving the Settlement. Plaintiffs’ counsel will provide a draft of the  
21 motion for final approval to Defendant’s counsel prior to filing the motion.

22                   **12. Funding and Disbursement of Gross Settlement Fund**

23                   No later than fifteen (15) court days after the Effective Date, Defendant shall fund the Gross  
24 Settlement Fund by wiring the money to a Qualified Settlement Fund (“QSF”) that shall be set up,  
25 held and controlled by the Settlement Administrator. The Parties agree that the QSF is intended to  
26 be a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. section 1.469B-1,  
27 26CFR section 1.468B-1, et seq., and will be administered by the Settlement Administrator as such.

28                   Within ten (10) court days after receipt of the Gross Settlement Fund, the Settlement

1 Administrator shall distribute all payments owing under the Settlement, including (1) the individual  
2 settlement payments to all members of the California Rule 23 Class who did not opt-out of the  
3 Settlement, (2) Class Counsel Fees & Costs, (3) the Service Award, and (4) Settlement  
4 Administration Costs.

5 The settlement checks to the members of the California Rule 23 Class shall be valid for one  
6 hundred and eighty (180) calendar days. Any settlement checks remaining uncashed after expiration  
7 of that period shall be voided and the amount shall be deposited with the State of California  
8 Controller's Office of Unclaimed Funds in the name of the individual to whom the settlement check  
9 had been addressed.

10 Members of the California Rule 23 Class who did not opt-out of the Settlement shall be bound  
11 by all the terms of this Agreement, regardless of whether he or she cashes his or her settlement  
12 payment.

13 **13. Limitations on Use of Settlement**

14 **a. No Admission**

15 Neither the acceptance nor the performance by Defendant of the terms contained in this  
16 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed  
17 as, or deemed a precedent or an admission by Defendant of the truth of any allegations in any version  
18 of the Complaint.

19 **b. No Evidentiary Use**

20 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation  
21 or drafting of it, shall be offered or used as evidence in the Action or any other proceedings, except  
22 as is reasonably necessary to effectuate this Agreement's purpose and terms. This Agreement may  
23 be used by Defendant and/or the Releasees to prove or defend against any claim released herein by  
24 any member of the California Rule 23 Class in any judicial, quasi-judicial, administrative, or  
25 governmental proceeding.

26 **c. Nullification**

27 If the Court for any reason does not approve this Settlement, this Agreement shall be  
28 considered null and void and all Parties to this Settlement shall stand in the same position, without

1 prejudice, as if the Settlement had been neither entered into nor filed with the Court. Moreover, in  
2 the event the Court does not approve this Settlement, Defendant will not be deemed to have waived,  
3 limited, or affected in any way any of its defenses in this Action. Invalidation of any material portion  
4 of this Settlement shall invalidate this Settlement in its entirety unless the Parties agree in writing that  
5 the remaining provisions shall remain in full force and effect.

6 **14. Miscellaneous Provisions**

7 **a. Amendments**

8 The terms and provisions of this Agreement may be amended only by a written agreement  
9 that is signed by both Class Counsel and Defendant's counsel.

10 **b. Jurisdiction of the Court to Enforce Terms of Agreement**

11 The Parties stipulate and agree that the Court will retain jurisdiction to enforce the terms of  
12 this Agreement following the entry of the Judgment. The Parties agree to the exclusive jurisdiction  
13 of the Court to enforce the terms and conditions contained herein.

14 **c. Enforcement Actions**

15 In the event one or more of the Parties to this Stipulation institutes and legal action or other  
16 proceeding against any other party or parties to enforce the provisions of this Stipulation, or to declare  
17 rights and/or obligations under this Stipulation, the successful party or parties shall be entitled to  
18 recover from the unsuccessful party or parties reasonable attorneys' fees and costs in connection with  
19 any enforcement actions.

20 **d. No Inducements**

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

25 **e. No Prior Assignment**

26 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,  
27 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or  
28 entity any portion of any liability, claim, demand, action, cause of action or rights herein released and

1 discharged except as set forth herein.

2 **f. Counterparts**

3 This Agreement, and any amendments hereto, may be executed in any number of counterparts  
4 and by electronic signature, each of which when executed and delivered shall be deemed to be an  
5 original and all of which taken together shall constitute but one and the same instrument. This  
6 Agreement will become effective on the date when the last person signs and dates it.

7 **g. Integration Clause**

8 This document, along with any exhibits attached hereto, constitutes the complete and entire  
9 Agreement between the Parties pertaining to the subject matter hereof, and the final, complete and  
10 exclusive expression of the terms and conditions of their Agreement. Any and all prior agreements,  
11 representations, negotiations, and understandings between the Parties, oral or written, express or  
12 implied, are hereby superseded and merged herein.

13 **IN WITNESS WHEREOF**, the Parties hereto execute this Agreement and have caused this  
14 Agreement to be executed by their duly authorized representatives.

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REPRESENTATIVE PLAINTIFF

Date: \_\_\_\_\_

\_\_\_\_\_

MARGARITA ERGUERA

CMG CIT ACQUISITION, LLC

Date: September 26, 2022

  
\_\_\_\_\_

Printed Name: Aram Hampoian

Title: CEO

1 discharged except as set forth herein.

2 **f. Counterparts**

3 This Agreement, and any amendments hereto, may be executed in any number of counterparts  
4 and by electronic signature, each of which when executed and delivered shall be deemed to be an  
5 original and all of which taken together shall constitute but one and the same instrument. This  
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9 Agreement between the Parties pertaining to the subject matter hereof, and the final, complete and  
10 exclusive expression of the terms and conditions of their Agreement. Any and all prior agreements,  
11 representations, negotiations, and understandings between the Parties, oral or written, express or  
12 implied, are hereby superseded and merged herein.

13 **IN WITNESS WHEREOF**, the Parties hereto execute this Agreement and have caused this  
14 Agreement to be executed by their duly authorized representatives.

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REPRESENTATIVE PLAINTIFF

Date: 09/28/2022

  
\_\_\_\_\_  
Margarita Erguera (Sep 28, 2022 07:17 PDT)

MARGARITA ERGUERA

CMG CIT ACQUISITION, LLC

Date: \_\_\_\_\_

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT A

LEGAL NOTICE:

If you were employed by CMG CIT Acquisition, LLC as a non-exempt hourly healthcare professional in California at any time from December 8, 2016 through September 30, 2022, worked overtime, and received a per diem allowance, there has been a class action settlement that may affect your rights.

*A court authorized this Notice.*

*Margarita Erguera v. CMG CIT Acquisition, LLC, et al., Case No. 1:20-cv-01744-JLT-BAK (E.D. Cal.)*

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>DO NOTHING</b>	You will be paid your share of the settlement <b>and</b> you will give up any rights to sue for the released claims (described in Section 11 below).
<b>SUBMIT A DATA DISPUTE</b>	Dispute the number of overtime hours listed in your Notice. Receive a settlement share once the dispute is resolved and give up any rights to sue for the released claims.
<b>EXCLUDE YOURSELF</b>	Waive all rights, including money, from the settlement. Retain all rights you may have against Defendant, explained below.
<b>OBJECT</b>	Write to the Court about why you don't agree with the settlement. The Court may or may not agree with your objection.

<b>HOW MUCH CAN I GET?</b>	Look at Section 8 of this Notice.
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**1. Why Did I Get This Notice Package?**

**You are not being sued.** Plaintiff Margarita Erguera (“Plaintiff”) sued Defendant CMG CIT Acquisition, LLC (“Defendant”) in a class action lawsuit on behalf of employees like you. The Court in charge of the case is the U.S. District Court for the Eastern District of California. The case is titled *Margarita Erguera v. CMG CIT Acquisition, LLC, et al.*, Case No. 1:20-cv-01744-JLT-BAK (hereafter “Lawsuit”).

You received this Notice because the records of Defendant identify you as a member of the following class of individuals who will be affected by a proposed settlement of the Lawsuit: “All non-exempt hourly healthcare professionals employed by CMG CIT Acquisition, LLC in California who, at any time from December 8, 2016 through September 30, 2022, worked overtime and received a per diem allowance” (hereafter “Settlement Class”).

On \_\_\_\_\_, 2022, the Court entered an order granting preliminary approval of the proposed settlement and directing that this Notice be sent to all members of the Settlement Class because they have a right to know about the proposed settlement, and about all of their options, before the Court decides whether to grant final approval of the settlement.

The purpose of this Notice is to explain the Lawsuit, the proposed settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.



## 2. What Is This Lawsuit About?

The lawsuit alleges that Defendant underpaid overtime by excluding per diem allowances from the calculation of overtime rates. On behalf of the Settlement Class, Plaintiff asserts claims for unpaid overtime, waiting time penalties, and unlawful business practices. Defendant denies any liability whatsoever and denies that any overtime wages or penalties are owed.

## 3. Do I Need to Hire an Attorney?

**You do not need to hire your own attorney.** You are already represented by Class Counsel (see Section 15 for contact information). However, you may hire your own attorney at your own expense if you wish to do so.

## 4. What Is Defendant's Position?

Defendant denies and continues to deny each of the claims and contentions. It contends that Plaintiff and other traveling healthcare professionals were paid all wages that were contracted for or otherwise owed.

Although it believes that it complied with the law, Defendant has concluded that further defense of this litigation would be protracted and expensive for all parties. Defendant has also taken into account the risks of further litigation in reaching its decision. Defendant has, therefore, agreed to settle in the manner and upon the terms set forth in the settlement agreement to put to rest the claims alleged in the lawsuit.

## 5. Why Is There a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. After a thorough investigation into the facts of this lawsuit, both sides agreed to a settlement after mediating with a neutral third-party mediator. The class claims were settled because Class Counsel and the Plaintiff believe that the amount of the settlement is fair and reasonable in light of the strength and weaknesses of the claims and other factors.

## 6. How Do I Know If I Am Part of the Settlement?

You are eligible to participate in the settlement if you were employed in California by Defendant as a non-exempt hourly healthcare professional at any time from December 8, 2016 through September 30, 2022, worked overtime, and received a per diem allowance.

## 7. What Does the Settlement Provide?

Class members who do not timely submit a signed and valid request for exclusion will receive payments from the Net Settlement Amount. The Net Settlement Amount is the portion of the Gross Settlement Amount of \$900,000 available for distribution to members of the Settlement Class who do not timely submit a signed and valid request for exclusion after deduction of the

Court-approved Class Representative Service Award, Class Counsel’s Attorneys’ Fees and Costs, and Settlement Administration Costs.

Deductions for Class Representative Service Award, Class Counsel’s Attorneys’ Fees and Costs, and Settlement Administration Costs. Class Counsel will ask the Court to award attorneys’ fees in an amount of up to \$222,500 which represents twenty-five percent (25%) of the Gross Settlement Amount, and litigation costs not to exceed \$10,000.00 from the Class Settlement Amount. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Award from the Gross Settlement Amount in an amount of up to \$5,000.00 to Plaintiff to compensate her for the risks, time and expense of her involvement in this Action. This payment is in addition to whatever payment Plaintiff is otherwise entitled to as a class member. The Settlement Administrator will also be reimbursed for the expense of notifying class members of the settlement, processing requests for exclusions submitted by class members, and distributing individual settlement payments. Settlement Administration Costs are not to exceed \$15,000.00.

### 8. What Can I Get From the Settlement?

**Defendant’s records indicate that you worked approximately \_\_\_ overtime hours in California between December 8, 2016 and September 30, 2022 as a non-exempt hourly healthcare professional. Based on these records, your estimated share of the settlement is \$\_\_\_\_\_.**

One-third (1/3) of each individual settlement payment will be designated as allegedly unpaid wages, for which an IRS Form W-2 shall be issued, and two-thirds (2/3) will be designated as alleged interest and penalties, for which an IRS Form 1099 shall be issued.

### 9. How Was My Share Calculated?

The Net Settlement Amount is allocated pro rata among members of the Settlement Class based on the number of overtime hours Defendant’s pay records credit each class member with having worked in California during the class period (“Qualifying Overtime Hours”). The Net Settlement Amount was first divided by the total number of Qualifying Overtime Hours worked, in aggregate, by the entire Settlement Class to determine the monetary value of each Qualifying Overtime Hour. Each individual payment to a member of the class was then calculated by multiplying that individual’s number of Qualifying Overtime Hours by the monetary value of each Qualifying Overtime Hour.

### 10. How Can I Get Payment?

**You do not need to take any action to receive your estimated share of the settlement.**

If you dispute the number of overtime hours to which you have been credited, as provided in this Notice, or the amount of your settlement share, you must contact the Settlement Administrator with the details of your dispute and provide documentary evidence (for example, W-2s or paystubs) no later than <<Date>>.

## 11. What Rights Do I Give Up If I Participate or Do Nothing?

Unless you exclude yourself, you will remain a member of the Settlement Class, and you will be bound by the terms of the settlement, including releasing the claims described below. That means that you will be unable to sue, or to continue to sue, or be part of any other lawsuit about the released claims. It also means that all of the Court's orders will apply to you and legally bind you.

### Released Claims

Subject to the Court's final approval of the settlement, you shall release CMG CIT Acquisition, LLC, its predecessor Circharo Acquisitions LLC, along with any parent, subsidiary, affiliate, predecessor or successor, agents, employees, officers, and directors throughout the class period from any and all debts, liabilities, costs, demands, obligations, claims, causes of action, or complaints arising during the class period that were pled on behalf of the Settlement Class in the operative Complaint, or which could have been pled on behalf of the Settlement Class based on the same facts as pled in the operative Complaint. This includes claims, to the extent based on the same facts as pled in the operative Complaint, relating to the alleged failure of the Defendant to provide any of the Settlement Class members with compensation as required by law relating to wages, claims for overtime hours worked, itemized wage statement/pay stub violations, civil penalties, PAGA penalties, or waiting-time penalties as required by law or regulations, the failure to pay penalties, alleged violations of California Labor Code as well as the relevant Industrial Welfare Commission Wage Order(s), Title 8 of the California Code of Regulations, California Business and Professions Code Sections 17200, et seq., as well as claims for interest, costs, attorneys' fees, compensatory damages, and all claims for restitution and other equitable relief, injunctive relief, liquidated damages, and any other remedies owed or available under the law based on the facts set forth in the operative Complaint.

## 12. How Do I Exclude Myself from the Settlement?

If you do *not* wish to participate in the settlement, you may exclude yourself (generally called "opting out") by submitting an "Opt-Out Letter" directly to the Settlement Administrator at the following address:

**Phoenix Settlement Administrators  
[Address]**

The Opt-Out Letter must be (1) signed; (2) include your full legal name, home address, telephone number, and last four digits of your social security number; (3) express your intention to opt-out of the settlement; and (4) be postmarked no later than << Date >>.

If you submit a timely and valid request for exclusion, then upon its receipt you shall no longer be a member of the Settlement Class, you shall be barred from participating in any portion of the settlement, you may not object and you shall receive no benefits from the settlement. If you wish, you may pursue, at your own expense, any claims you may have against Defendant. If you do not submit a complete and timely written request for exclusion, you will be included in the Settlement Class, and be bound by the terms of the settlement (including the Released Claims described in Section 11 herein).

Do not submit both an objection and request for exclusion. If you submit both, the request for exclusion will be valid, and you will be excluded from the Class.

### 13. When Is the Final Approval and Fairness Hearing?

The Court will hold a Final Approval Hearing in Courtroom <<number>> of the United States District Court for the Eastern District of California, located at <<address>> on <<date and time>> or such other, later date as the Court may authorize, to determine whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also be asked to approve Plaintiff's Class Representative Service Award, Class Counsel's request for Attorneys' Fees and Costs, and the Settlement Administration Costs.

The hearing may be continued without further notice to class members. It is not necessary for you to appear at this hearing. Notice of the final judgment will be posted on the Settlement Administrator's website at [Phoenix Website].

### 14. How Do I Object to the Settlement and Appear at the Final Approval and Fairness Hearing?

You may object to the terms of the settlement before the Final Approval Hearing. However, if the Court rejects your objection, you will still be bound by the terms of the settlement. To object, you must mail a written objection to the Settlement Administrator at the address in Section 12 above. Any written objection must contain a statement of your objection to the settlement, accompanied by legal and factual support, if any. Your objection must also contain your full name, home address, telephone number, and last four digits of your social security number. Any objections must be postmarked no later than << Date >>. **DO NOT TELEPHONE THE COURT.**

Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, unless otherwise ordered by the Court. You do not have to attend the hearing, but you may do so at your own expense. If you have submitted an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**If the Court approves the settlement despite any objections, you will receive your settlement share and will be bound by the terms of the settlement (including the released claims described in section 11 herein).**

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**15. How Do I Get Additional Information?**

**If you have any questions, you can call the Settlement Administrator at (800) \_\_\_\_\_ or Class Counsel at (626) 808-4357.**

<b>CLASS COUNSEL</b>	<b>DEFENDANT'S ATTORNEYS</b>
<b>HAYES PAWLENKO LLP</b> Matthew B. Hayes Kye D. Pawlenko 1414 Fair Oaks Avenue, Unit 2B South Pasadena, California 91030 Tel. (626) 808-4357	<b>JACKSON LEWIS P.C.</b> Kevin D. Reese 50 California Street, 9 <sup>th</sup> Floor San Francisco, CA 94111 Tel: (415) 394-9401

**PLEASE DO NOT WRITE OR TELEPHONE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT OR THE SETTLEMENT PROCESS.**