

## **CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Shahna Bond (“Plaintiff”) and defendant KPG Healthcare LLC (“KPG”). The Agreement refers to Plaintiff and KPG collectively as “Parties,” or individually as “Party.”

### **1. DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against KPG captioned *Shahna Bond v. KPG Healthcare LLC*, case number 30-2020-01140084-CU-OE-CXC, initiated on April 17, 2020 and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” CPT Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Class” means the class certified by the Court on June 27, 2022: “All hourly nurses employed by KPG Healthcare LLC in California who, at any time from April 17, 2016 through the date of class certification, worked one or more workweeks in which they were paid overtime and received a housing stipend and/or a meals and incidentals stipend, with the exception of those individuals who executed an arbitration agreement with KPG Healthcare LLC.”
- 1.5. “Class Counsel” means Hayes Pawlenko LLP.
- 1.6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.7. “Class Data” means Class Member identifying information in KPG’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks.
- 1.8. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.
- 1.9. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.10. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION

SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement.

- 1.11. “Class Period” means the period from April 17, 2016 to June 27, 2022.
- 1.12. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.13. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.14. “Court” means the Superior Court of California, County of Orange.
- 1.15. “KPG” means named Defendant KPG Healthcare LLC.
- 1.16. “Defense Counsel” means Greenberg Glusker Fields Claman & Machtinger LLP.
- 1.17. “Effective Date” means the date by when both of the following have occurred:
  - (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and
  - (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences:
    - (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment;
    - (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.18. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.19. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.20. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.21. “Gross Settlement Amount” means \$816,851 which is the total amount KPG agrees to pay under the Settlement except as provided in Paragraph 7 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.22. “Individual Class Payment” means each Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the Participating Class Member during the Class Period.
- 1.23. “Judgment” means the judgment entered by the Court based upon the Final Approval.

- 1.24. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.25. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.26. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.27. “Plaintiff” means Shahna Bond, the named plaintiff in the Action.
- 1.28. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.29. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval.
- 1.30. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.31. “Released Parties” means: KPG and each of its former and present directors, officers, shareholders, owners, members, agents, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates as well as any agency, medical facility, hospital or KPG client, including but not limited to Cross Country Workforce Solutions and/or John Muir Health System or any affiliates thereof, with which any Class Member worked during the Class Period as a result of the Class Member’s employment with KPG.
- 1.32. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.33. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are re-sent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.34. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.35. “Workweek” means any week during which a Class Member worked for KPG for at least one day, during the Class Period.

## 2. RECITALS.

- 2.1. On April 17, 2020, Plaintiff commenced this Action by filing a Complaint alleging causes of action against KPG for failure to pay overtime, unfair business practices, and waiting time penalties. The First Amended Complaint, filed on July 6, 2021, is the operative complaint in the Action (the “Operative Complaint.”) KPG denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2. On January 10, 2023, the Parties participated in an all-day mediation presided over by the Hon. Carl J. West (Ret.) which led to this Agreement to settle the Action.
- 2.3. Prior to mediation, Plaintiff obtained, through formal and informal discovery, documents, testimony, and damages data. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130 (“*Dunk/Kullar*”).
- 2.4. The Court has granted class certification. On June 27, 2022, the Court certified the following class: “All hourly nurses employed by KPG Healthcare LLC in California who, at any time from April 17, 2016 through the date of class certification, worked one or more workweeks in which they were paid overtime and received a housing stipend and/or a meals and incidentals stipend, with the exception of those individuals who executed an arbitration agreement with KPG Healthcare LLC.”
- 2.5. At the request of the Parties, the Court stayed the Action pending private mediation and continued the deadline for the Parties to submit a proposed notice of class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

## 3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, KPG promises to pay \$816,851.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. KPG has no obligation to pay the Gross Settlement Amount or any payroll taxes prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to KPG.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified

by the Court in the Final Approval:

- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 in addition to any Individual Class Payment the Class Representative is entitled to receive as a Participating Class Member. KPG will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
  
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$272,256.44 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. KPG will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds KPG harmless, and indemnifies KPG, from any dispute or controversy regarding any division or sharing of any of these Payments.
  
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
  
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
  - 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of each Participating Class Member's Individual Class Payment will be allocated to

settlement of wage claims (the “Wage Portion”). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining 66.66% of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for interest and penalties (the “Non- Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, KPG will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data

to Administrator employees who need access to the Class Data to effect and perform under this Agreement. KPG has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which KPG must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.2. Funding of Gross Settlement Amount. KPG shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay KPG's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

4.3. Payments from the Gross Settlement Amount. Within 14 days after KPG funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments.

4.3.1. The Administrator will issue checks for the Individual Class Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.3.2. The Administrator shall conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.3.3. For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.3.4. The payment of Individual Class Payments shall not obligate KPG to confer any additional benefits or make any additional payments to Class Members (such as

401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when KPG fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, legatees, executors, guardians, successors, and assigns generally, forever and completely release and discharge Released Parties from all complaints, claims, causes of action, charges, liabilities, obligations, agreements, controversies, transactions, occurrences, damages, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Stipulation, whether known or unknown, suspected or unsuspected, including, but not limited to all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint or ascertained during the Action and released under Paragraph 5.2, below. As well as any other claims that could have been asserted by Plaintiff in connection with her employment with KPG or termination thereof through the date of execution of this Agreement ("Plaintiff's Release.") Without limiting the generality of the foregoing, Plaintiff expressly releases all claims or rights, both in her individual capacity and in her capacity as a future representative in a class action or collective action, against Released Parties arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any tort, including but not limited to, negligence, fraud, misrepresentation and violation of California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, defamation, "retaliation" claims and claims for violation of public policy, any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, overtime, and alleged "off the clock" work under federal and state law, including, but not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages or penalties pursuant to California Labor Code Section 226, meal period and rest break payments and penalties pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor Code Section 1194 et seq.; claims under the Private Attorneys General Act of 2004, Labor Code section 2699 et seq., and the alleged violation or breach of any other state or federal statute, rule and or regulation; including all applicable Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful

discharge,” “constructive discharge,” and “retaliation” claims; any claims relating to any breach of public policy; any legal restrictions on Defendant’s right to discharge employees; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and Labor Code 197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq. (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including discrimination or harassment based on race, religious creed, color, national origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code § 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor Standards Act; and (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits). Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s discovery of them.

5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint or ascertained in the course of the Action, including but not limited to any claims regarding calculation of the hourly or daily rate for any and all forms of compensation and/or benefits during the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability,

social security, workers' compensation, or claims based on facts occurring outside the Class Period. Except for those Settlement Class Members who exclude themselves in compliance with the procedures set forth below, all Settlement Class Members will: (i) be deemed to be Participating Class Members for all purposes under this Agreement; and (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein. Participating Class Members who do not timely exclude themselves in compliance with the procedures set forth above will be bound by all the terms of this Agreement, regardless of whether that Participating Class Member receives and cashes his or her settlement check.

## **6. SETTLEMENT ADMINISTRATION.**

- 6.1. Selection of Administrator. The Parties have jointly selected CPT Group, Inc. ("CPT") to serve as the Administrator and verified that, as a condition of appointment, CPT agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 6.2. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 6.3. Notice to Class Members.
  - 6.3.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members and Workweeks in the Class Data.
  - 6.3.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment payable to the Class Member, and the number of Workweeks used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
  - 6.3.3. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

- 6.3.4. The deadlines for Class Members' written objections, Challenges to Workweeks and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 6.3.5. If the Administrator, KPG or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
- 6.4. Requests for Exclusion (Opt-Outs).
- 6.4.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion, substantially in the form attached hereto as **Exhibit B**, not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 6.4.2. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 5.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 6.4.3. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.
- 6.5. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long

as they are consistent with the Class Data. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

6.6. Objections to Settlement.

6.6.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

6.6.2. Participating Class Members may send a written Objection, substantially in the form attached hereto as **Exhibit C**, to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. Absent good cause found by the Court, a Participating Class Member who elects to send a written Objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

6.6.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

6.6.4. Class Counsel shall file with the Court a single packet of all written Objections received by the Administrator.

7. **CLASS SIZE AND ESCALATOR CLAUSE.** KPG represents that there are 401 Class Members. In the event that there are more than 401 Class Members, the Parties agree that the Gross Settlement Amount shall increase pro rata for each additional individual.

8. **KPG'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion exceeds 5% of the total of all Class Members, KPG may, but is not obligated to, elect to withdraw from the Settlement. The Parties agree that, if KPG withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, KPG will remain responsible for paying all Settlement Administration Expenses incurred to that point.

9. **INTERIM STAY OF PROCEEDINGS.** Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement, including amending the operative Complaint.

10. **NO PUBLICITY.** The Parties agree that Class Counsel or any other attorneys acting for Class

Members or Plaintiff shall not make any press releases or conduct any press conferences or engage in other publicity, including but not limited to advertising, speaking with reporters, blogging, making social media posts or making any public statements orally or in writing regarding the Action or the settlement of the Action with KPG, including the terms of this Agreement. Nothing in this paragraph is meant to restrict the Administrator from issuing required notices to Class Members as set forth in this Agreement.

## **11. ADDITIONAL PROVISIONS.**

- 11.1. No Admission of Liability. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by KPG that any of the allegations in the Operative Complaint have merit or that KPG has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that KPG's defenses in the Action have merit. Whether or not the Court issues Preliminary Approval or Final Approval, nothing contained herein, nor the consummation of this Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of KPG or any of the other Released Parties. Each of the Parties hereto has entered into this Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Agreement.
- 11.2. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 11.3. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 11.4. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and KPG, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 11.5. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence, and

supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 11.6. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 11.7. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 11.8. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 11.9. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 11.10. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement. It is agreed that, because the Participating Class Members are numerous, it is impossible or impractical to have each Participating Class Member execute this Agreement. The Notice will advise all Participating Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Participating Class Member.

IT IS SO AGREED:

Dated: 04/14:2023

Dated: \_\_\_\_\_

  
Shahna Bond (Apr 14, 2023 04:03 PDT)

SHAHNA BOND

\_\_\_\_\_  
KPG HEALTHCARE LLC

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

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

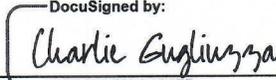
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IT IS SO AGREED:

Dated: \_\_\_\_\_

Dated: 4/12/2023 | 12:40 PM PDT

\_\_\_\_\_  
 SHAHNA BOND  
 DocuSigned by:  
  
 CCA8A705ABB475...  
 KPG HEALTHCARE LLC

Name: Charlie Gugliuzza  
 Title: General Counsel

APPROVED AS TO FORM:

Dated: 4/13/2023

Dated: 4/12/2023 | 7:48 PM PDT

*Kye D Pawlenko*

KYE D. PAWLENKO  
Attorney for Shahna Bond

DocuSigned by:

*Wendy Lane*

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WENDY E. LANE  
Attorney for KPG Healthcare LLC