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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 LAURA BUFORD, on behalf of herself,
20 all others similarly situated, and all
aggrieved employees,

21 Plaintiff,

22 vs.

23 MEDICAL SOLUTIONS, L.L.C., a
24 limited liability corporation; and DOES 1
to 100, Inclusive,

25 Defendants.
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27
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Case No.: 4:18-cv-04864-YGR

[Assigned to Hon. Yvonne Gonzalez
Rogers, Ctrm. 1, 4th Floor]

**JOINT STIPULATION OF CLASS
SETTLEMENT AND RELEASE
BETWEEN PLAINTIFF AND
DEFENDANT**

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1 This Joint Stipulation and Settlement Agreement (hereinafter “Settlement,”
2 “Agreement,” or “Settlement Agreement”) is entered into by and between Defendant
3 Medical Solutions, L.L.C. (“Medical Solutions” or “Defendant”), a Delaware limited
4 liability company, on the one hand, and Plaintiff Laura Buford (“Buford” or
5 “Representative Plaintiff”), on behalf of herself, each member of the Settlement Class,
6 and each member of the Settlement Aggrieved Group, on the other hand, subject to the
7 terms and conditions hereof and the approval of the Court pursuant to Federal Rule of
8 Civil Procedure 23 and California Labor Code § 2699(1)(2).

9 **I. SUMMARY OF SETTLEMENT TERMS**

10 Under the terms of this Settlement, Medical Solutions will pay the Gross
11 Settlement Amount of \$1,150,000.00, without reversion, in exchange for the
12 consideration and subject to the terms and conditions discussed herein. Authorized
13 Claimants will not be required to make a claim to receive a Settlement Award. With the
14 exception of employer-side payroll taxes, Defendant will not be required to pay
15 anything more than the Gross Settlement Amount.

16 The Parties will seek the Court’s approval of this Settlement pursuant to both
17 Federal Rule of Civil Procedure 23 and California Labor Code § 2699(1)(2). Following
18 entry of the Preliminary Approval Order, (1) individuals who are members of the
19 Settlement Class, only, will be provided with a Class Notice, (2) individuals who are
20 members of the Settlement Aggrieved Group, only, will be provided with a SAG Notice,
21 and (3) individuals who are members of both the Settlement Class and the Settlement
22 Aggrieved Group will be provided with a Class-SAG Notice. Further, all members of
23 the Settlement Class—including those who are also members of the Settlement
24 Aggrieved Group and those who are not—will be provided with an opportunity to
25 exclude themselves from this Settlement Agreement during the Opt-Out Period. Should
26 the Court not approve this Settlement, the Settlement Agreement shall be deemed null
27 and void *ab initio* and of no force and effect.

1 In exchange for the consideration discussed herein: (1) Representative Plaintiff
 2 agrees to a general release of any and all claims, except as expressly excluded in this
 3 Agreement, that she has against Defendant pursuant to the Personal Release contained
 4 herein; (2) the Settlement Class Members who do not opt-out of the Settlement Class
 5 release the Class Released Claims by participating in the Settlement; and (3) the
 6 members of the Settlement Aggrieved Group release the SAG Released Claims by the
 7 Settlement.

8 Finally, to the extent the members of the Settlement Class and Settlement
 9 Aggrieved Group worked in states other than California, any claims associated with
 10 their employment outside California are not governed by this Settlement Agreement.
 11 Additionally, nothing herein shall be construed as a release of the Dittman Reserved
 12 Claims.

13 **II. DEFINITIONS**

14 As used in this Settlement Agreement, the following terms shall have the
 15 following meanings:

16 1. “Action” means the civil action titled *Buford v. Medical Solutions, L.L.C.*,
 17 pending in the Northern District of California, Case No. 4:18-cv-04864-YGR.

18 2. “Authorized Claimants” means all SAG Members and those Settlement
 19 Class Members who do not timely opt out of the Settlement Class.

20 3. “Claims Administration Costs” means the fees and costs incurred or
 21 charged by the Claims Administrator in connection with the execution of its duties
 22 under this Settlement Agreement including, but not limited to: (i) preparing, issuing,
 23 mailing and/or monitoring reports, filings, and notices; (ii) computing the amount of the
 24 Settlement Awards and any other payments to be made under this Settlement
 25 Agreement, and issuing those payments; (iii) handling inquiries about the calculation
 26 of individual Settlement Awards; (iv) establishing and operating a Settlement payment
 27 center address and phone number to receive inquiries about the Settlement; and (v)
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1 preparing and issuing any tax forms required under the law and/or this Agreement, and
2 preparing and submitting any filings required by any governmental taxing authority or
3 other governmental agency.

4 4. “Claims Administrator” means (“CPT Group, Inc.”), the third-party entity
5 that Class Counsel and Defense Counsel mutually selected to process and administer
6 the terms of this Settlement Agreement.

7 5. “Class Counsel” means Michael R. Crosner, Esq., J. Kirk Donnelly and
8 Zachary M. Crosner, Esq. of Crosner Legal, P.C.

9 6. “Class Notice” means the notice to be sent to the individuals who are
10 members of the Settlement Class, only, after the Court preliminarily approves the terms
11 contained in this Agreement, informing them of the material terms of the Settlement,
12 why they are receiving the Class Notice, and what their options are with respect to the
13 Settlement. The proposed Class Notice is attached as Exhibit A to this Settlement
14 Agreement.

15 7. “Class Notice Packet” means and includes: (a) the Opt-Out Form, (b) a
16 pre-paid, self-addressed, return envelope, and (c) either (i) for those individuals who
17 are members of the Settlement Class, only, the Class Notice or (ii) for those individuals
18 who are members of both the Settlement Class and the Settlement Aggrieved Group,
19 the Class-SAG Notice.

20 8. “Class Released Claims” means any and all claims to be released by the
21 Settlement Class Members who do not opt out of the Settlement consisting of all claims
22 that were or could have been alleged based on the facts alleged in the FAC, including,
23 but not limited to, any corresponding Fair Labor Standards Act (“FLSA”) or related
24 Private Attorneys General Act of 2004 (“PAGA”) or other similar claims under any
25 federal, state, or local law, for the Settlement Class Period, through and including the
26 date of preliminary approval of this Settlement, with the sole exception that the Class
27 Released Claims expressly exclude the Dittman Reserved Claims. The release will be
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1 effectuated when the Settlement Class Members cash their settlement checks.

2 9. “Class-SAG Lists” means the lists to be provided to the Class
3 Administrator, which consist of the following information as pertains to the Settlement
4 Class Members and SAG Members: their first and last names, last-known addresses,
5 dates of employment, social security numbers, and (a) for the Settlement Class, the
6 number of workweeks worked during the Settlement Class Period as a Settlement Class
7 Member and (b) for the Settlement Aggrieved Group, the number of workweeks worked
8 during the SAG Period as a SAG Member.

9 10. “Class-SAG Notice” means the notice to be sent to the individuals who are
10 members of both the Settlement Class and the Settlement Aggrieved Group after the
11 Court preliminarily approves the terms contained in this Agreement, informing them of
12 the material terms of the Settlement, why they are receiving the Class-SAG Notice, and
13 what their options are with respect to the Settlement. The proposed Class-SAG Notice
14 is attached as Exhibit B to this Settlement Agreement.

15 11. “Class/SAG Released Claims” collectively refers to the Class Released
16 Claims and the SAG Released Claims.

17 12. “Court” means the Northern District of California, in which the Action is
18 pending, or any other Court with proper jurisdiction over this Action.

19 13. “Defense Counsel” means Kenneth D. Sulzer, Esq. and Sarah Kroll-
20 Rosenbaum, Esq. of Constangy, Brooks, Smith & Prophete, LLP.

21 14. “Dittman Reserved Claims” means the claims asserted in *Dittman v.*
22 *Medical Solutions, L.L.C., et al.*, Eastern District of California Case No. 2:17-cv-01851-
23 MCE-CKD (“*Dittman*”): (1) for unpaid overtime wages; and (2) under PAGA, Business
24 & Professions Code §§ 17200, *et seq.*, and Labor Code § 203, but only to the extent
25 those claims are premised on the unpaid overtime claim as asserted in *Dittman*.

26 15. “Effective Date” means 15 business days after the latest of: (i) the
27 expiration of the time for filing a notice of any appeal from the Final Approval Order,
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1 or (ii) the date of final affirmance of an appeal of that Final Approval Order, or (iii) the
2 expiration of the time for a petition for review or writ of certiorari with respect to the
3 Final Approval Order, and, if review or certiorari is granted, the date of final affirmance
4 of the Final Approval Order following review pursuant to that grant; or (iv) the date of
5 final dismissal of any appeal from the Final Approval Order or the final dismissal of
6 any proceeding on review or certiorari with respect to the Final Approval Order that has
7 the effect of confirming the Final Approval Order.

8 16. “FAC” means the First Amended Complaint, which is the operative
9 complaint in the Action, filed by Buford on June 14, 2018.

10 17. “Final Approval Date” means the date of entry of the Order granting final
11 approval of this Settlement Agreement.

12 18. “Final Approval Order” means the Order granting final approval of this
13 Settlement.

14 19. “Final Judgment” or “Judgment” means the judgment entered by the Court
15 pursuant to the terms set forth in this Settlement Agreement, finally and fully giving
16 effect to the terms contained herein.

17 20. “Gross Settlement Amount” means the total amount of \$1,150,000.00 to
18 be paid by Defendant in full satisfaction of the Class/SAG Released Claims and all
19 claims released by Buford pursuant to the Personal Release, and includes all individual
20 Settlement Awards payable to the Authorized Claimants, Representative Plaintiff’s
21 Incentive Award, Class Counsel’s attorneys’ fees and costs, the Claims Administration
22 Costs, and the PAGA Payments, but does not include any employer-side payroll taxes
23 required by law.

24 21. “Incentive Award” means the payment to Representative Plaintiff for her
25 service to the Settlement Class Members and SAG Members, and in consideration for
26 her execution of the Personal Release contained herein, which is in addition to whatever
27 payment she is otherwise entitled to receive as an Authorized Claimant.

1 22. “Net Settlement Amount” (“NSA”) means the portion of the Gross
2 Settlement Amount after deducting Class Counsel’s attorneys’ fees and costs, the
3 Incentive Award, the Claims Administration Costs, the portions of the PAGA Payments
4 payable to the Labor and Workforce Development Agency (“LWDA”), and the \$50,000
5 SAG Fund. The NSA will fund the Settlement Awards paid to the Authorized Claimants
6 among the Settlement Class Members.

7 23. “\$50,000 SAG Fund” means the \$50,000.00 portion of the PAGA Payment
8 which will fund the Settlement Awards to the SAG Members.

9 24. “Opt-Out Form” means a form by which the Settlement Class Members
10 may seek exclusion from the Settlement Agreement. The proposed Opt-Out Form is
11 attached as Exhibit D to this Settlement Agreement.

12 25. “Opt-out Period” means the 45 calendar-day period after the mailing of the
13 Class Notice Packets to the Settlement Class Members during which the Settlement
14 Class Members can timely opt out of the Settlement Agreement.

15 26. “PAGA Payments” means the portions of the Gross Settlement Amount
16 the Parties have agreed to allocate to settle the claims for civil penalties under PAGA,
17 which total \$210,000.00.

18 27. “Parties” means Buford and Medical Solutions, collectively.

19 28. “Party” means either Buford or Medical Solutions, individually.

20 29. “Personal Release” means Buford’s irrevocable and unconditional release,
21 acquittal, and discharge of the Released Parties and all persons and/or corporate entities
22 acting through, under, on behalf of, or in concert with any of them, or any of them, from
23 any and all Class/SAG Released Claims and any and all existing claims, demands, suits,
24 actions, causes of action, obligations, agreements, contracts, promises, liabilities, debts,
25 compensation, damages, losses, costs, expenses, and attorneys’ fees, of any and every
26 kind, nature or character, known or unknown, suspected or unsuspected, actual or
27 potential, absolute or contingent, pending or anticipated, which arise out of, are based
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1 upon, are by reason of, relate to, or in any way involve Buford's employment with
 2 Medical Solutions, including the termination thereof, and including, but not limited to,
 3 those arising under any federal, state, or local law, regulation or ordinance, contract,
 4 quasi-contract, the common law, public policy, or any constitution, such as, without
 5 limitation, the California Constitution; the California Labor Code, including Labor
 6 Code § 132a; Family Medical Leave Act; California Family Rights Act; Title VII of the
 7 Civil Rights Act of 1964; the California Fair Employment and Housing Act; the Private
 8 Attorneys General Act of 2004; Americans with Disabilities Act; Older Workers
 9 Benefit Protection Act; Age Discrimination in Employment Act; Consolidated
 10 Omnibus Budget Reconciliation Act of 1985; Employee Retirement Income Security
 11 Act of 1974; Civil Code § 51 *et seq.*; Wage Orders of the California Industrial Welfare
 12 Commission; the California Code of Regulations; the California Business and
 13 Professions Code; Fair Labor Standards Act; and claims of intentional infliction of
 14 emotional distress; defamation and/or libel, or any other damage to reputation claims;
 15 breach of implied contract; breach of the covenant of good faith and fair dealing, as well
 16 as any other express or implied covenant; or any other statute or common law principle
 17 of similar effect, known or unknown, which Buford now has, owns, or holds, or claims
 18 to have, own or hold, or which Buford at any time heretofore had, owned, or held, or
 19 claimed to have, own, or hold or which Buford at any time hereinafter may have, own,
 20 or hold, or claim to have, own, or hold, against each or any of the Released Parties,
 21 arising from acts, events, or circumstances occurring on or before the effective date of
 22 this Agreement. Buford acknowledges and agrees that this Agreement includes her
 23 release of claims for disputed wages pursuant to Labor Code § 206.5.

24 With respect to claims released in this Section, Buford expressly waives the
 25 benefits of California Civil Code § 1542. Civil Code § 1542 provides:

26 **A GENERAL RELEASE DOES NOT EXTEND TO**
 27 **CLAIMS THAT THE CREDITOR OR RELEASING**
 28 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**

1 **HER FAVOR AT THE TIME OF EXECUTING THE**
2 **RELEASE, AND THAT IF KNOWN BY HIM OR**
3 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
4 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

5 Notwithstanding the provisions of § 1542, and for the purpose of implementing
6 a complete release and discharge of the claims in the Personal Release, Buford expressly
7 acknowledges that this Agreement is intended to include in its effect all claims she does
8 not know of or suspect to exist in her favor at the time of execution hereof and that this
9 Agreement contemplates the extinguishment of all such claims.

10 30. “Preliminary Approval Motion” means the motion that will be filed by
11 Representative Plaintiff to obtain the Court’s (a) preliminary approval of this
12 Settlement, (b) approval of the Class Notice, the Class-SAG Notice, the SAG Notice,
13 and the Opt-Out Form, and (c) provisional certification of the Settlement Class.

14 31. “Preliminary Approval Order” means the order preliminarily approving
15 this Settlement, provisionally certifying the Settlement Class, and approving the Class
16 Notice, Class-SAG Notice, SAG Notice, and Opt-Out Form.

17 32. “Qualified Settlement Fund Account” means the account into which the
18 Claims Administrator will transfer the Gross Settlement Amount pursuant to Internal
19 Revenue Code § 1.468B-1.

20 33. “Released Parties” means (i) Medical Solutions; and (ii) Medical
21 Solutions’ past, present, or future subsidiaries, divisions, affiliates, predecessors,
22 successors, and assigns, officers, directors, agents, employees, advisors, insurers,
23 attorneys, executors, administrators, servants, owners, shareholders, bondholders,
24 partners, and any parent or related organizations, successors in interest, and/or
25 representatives.

26 34. “SAG Member(s)” means all individuals in the Settlement Aggrieved
27 Group.

28 35. “SAG Notice” means the notice to be sent to the individuals who are
members of the Settlement Aggrieved Group, only, after the Court preliminarily

1 approves the terms contained in this Agreement, informing them of the material terms
2 of the Settlement, and why they are receiving the SAG Notice. The proposed SAG
3 Notice is attached as Exhibit C to this Settlement Agreement.

4 36. “SAG Period” means the period from August 28, 2018 through the date of
5 the Preliminary Approval Order.

6 37. “SAG Released Claims” means any and all claims to be released by the
7 SAG Members, consisting of all claims for violation of PAGA, only, that were or could
8 have been alleged based on the facts alleged in the FAC, with the sole exception that
9 the SAG Released Claims expressly exclude claims for violation of PAGA premised
10 upon the Dittman Reserved Claims. The release will be effectuated upon entry of the
11 Final Approval Order.

12 38. “Settlement Aggrieved Group” (“SAG”) consists of all persons employed
13 by Defendant in California as non-exempt employees, including but not limited to
14 traveling healthcare professionals, who worked an assignment at any facility other than
15 a facility operated by Sutter Health or a related company during the SAG Period.

16 39. “Settlement Award” means the gross payment to any Settlement Class
17 Member and/or SAG Member made pursuant to the terms of this Settlement Agreement.

18 40. “Settlement Class” consists of all persons employed by Defendant in
19 California as non-exempt employees, including but not limited to traveling healthcare
20 professionals, who worked an assignment at any facility operated by Sutter Health or a
21 related company during the Settlement Class Period.

22 41. “Settlement Class Member(s)” means all individuals in the Settlement
23 Class.

24 42. “Settlement Class Period” means the period from May 10, 2014 through
25 the date of the Preliminary Approval Order.

26 43. “Settlement Fairness Hearing” or “Final Approval Hearing” means the
27 hearing following the Opt-Out Period, at which time the Parties will request the Court
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1 to finally and fully approve the fairness, reasonableness, and adequacy of the Settlement
2 Agreement and to enter a Final Approval Order and Final Judgment.

3 **III. BACKGROUND**

4 Buford initiated the Action on May 10, 2018. Thereafter, on June 14, 2018,
5 Buford filed the FAC, alleging causes of action for (1) failure to provide meal periods,
6 (2) failure to authorize or permit rest periods, (3) failure to provide complete and
7 accurate wage statements, (4) failure to pay for all reimbursable expenses, (5) failure to
8 pay minimum wages, (6) unfair business practices, (7) failure to pay all wages timely
9 upon separation of employment, and (8) violation of PAGA, on behalf of herself and a
10 putative class of persons who have been employed by Medical Solutions in California
11 since May 10, 2014 and classified as “non-exempt.” Medical Solutions removed the
12 Action to the Northern District of California on August 10, 2018 (Case No. 4:18-cv-
13 04864-YGR), where a Scheduling Conference was conducted on January 7, 2019.

14 Since January 2019, the Parties have engaged in discovery, and exchanged
15 written responses and documents related to issues of class certification, the merits of
16 the claims set forth in the FAC, and potential exposure. In July and August 2019, the
17 Parties engaged in efforts to mediate the Action. On August 28, 2019, the Parties
18 participated in a full day mediation before the Honorable Jay Gandhi (Ret.), which
19 resulted in an executed Memorandum of Understanding laying out, in summary terms,
20 the present Settlement Agreement between the Parties.

21 Class Counsel has investigated the facts relating to the claims alleged in the
22 Action, and analyzed the legal principles applicable to those claims. Based upon Class
23 Counsel’s discovery, investigation, and legal evaluation, and taking into account the
24 sharply contested legal and factual issues involved, Class Counsel’s assessment of the
25 uncertainties of complex litigation, and the relative benefits conferred upon the
26 Settlement Class and Settlement Aggrieved Group pursuant to this Settlement
27 Agreement, Class Counsel has concluded that a settlement with Medical Solutions on
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1 the terms set forth in this Agreement is fair, reasonable, adequate, and in the best
2 interests of Buford, the Settlement Class, and the Settlement Aggrieved Group. In
3 particular, Class Counsel and Buford understand the risks of the arguments and defenses
4 asserted by Medical Solutions in the Action.

5 Medical Solutions denied, and continues to deny, the allegations in the Action in
6 their entirety and any and all liability arising out of the conduct alleged in the FAC.
7 Medical Solutions also denies that, if the case were to proceed, any class could be
8 certified. Medical Solutions has asserted defenses to the claims alleged in the Action,
9 has always maintained that Medical Solutions complied at all times with the California
10 Labor Code, the California Business and Professions Code, and the Fair Labor
11 Standards Act, and further maintains that Buford, the Settlement Class Members, and
12 the SAG Members have been properly paid all wages and all other payments owed to
13 them under applicable federal and state law.

14 Nevertheless, Medical Solutions has concluded that further defense of this Action
15 would likely be protracted and expensive. Substantial amounts of Medical Solutions'
16 time, energy, and resources have already been expended, and absent this Settlement,
17 will continue to be expended in defense of the claims asserted in this Action. Medical
18 Solutions has therefore agreed to settle in the manner and upon the terms described in
19 this Agreement to put to rest the claims set forth in the Action.

20 The Parties and their counsel specifically agree that Medical Solutions'
21 agreement to settle this matter is not, and shall not be construed as, an admission of any
22 wrongdoing whatsoever by Medical Solutions.

23 **IV. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

24 **A. Mutual Cooperation.**

25 The Parties agree to cooperate fully with each other to accomplish the terms and
26 requirements of this Settlement Agreement, including the execution of such documents
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1 and the taking of such other action as may be necessary to implement the terms of this
2 Agreement.

3 **B. Class Certification for Settlement Purposes Only.**

4 For settlement purposes only, the Parties agree that the requisites for establishing
5 class certification with respect to the Settlement Class are met, and that the Settlement
6 Class may be certified. If the Settlement fails to be approved or otherwise fails to be
7 consummated for any reason whatsoever, then Defendant retains all rights previously
8 available to it, and any provisional certification of any class, or the adoption of any
9 procedure herein, shall be undone and the Parties restored to their pre-Settlement status.

10 **C. Preliminary Approval of the Settlement.**

11 Within 60 calendar days of signing this Settlement Agreement, Buford will file
12 the Preliminary Approval Motion, including such papers, pleadings, and evidence as
13 may be required for the Court to: (1) with respect to the Settlement Class, determine
14 that this Agreement is fair, adequate, and reasonable, per Fed. R. Civ. P. 23; and (2)
15 with respect to the Settlement Aggrieved Group, approve this Agreement per California
16 Labor Code § 2699(1)(2). Such submissions will also include the proposed Class Notice,
17 Class-SAG Notice, SAG Notice, and Opt-Out Form attached hereto as Exhibits A
18 through D, for the Court to approve. Defense Counsel shall have a reasonable
19 opportunity to review and comment on that motion before it is filed.

20 **D. CAFA and LWDA Notice.**

21 Within 10 calendar days of Buford filing the Preliminary Approval Motion,
22 Medical Solutions will serve notice of this Settlement as required by 28 U.S.C. § 1715.
23 Simultaneously with filing the Preliminary Approval Motion, Class Counsel will submit
24 a copy of this Settlement to the LWDA as required by Labor Code § 2699(1)(2).

25 **E. Notice, Opt-Outs, and Objections.**

26 Subject to the approval of the Court, notice of the Settlement Agreement shall be
27 provided to the members of the Settlement Class and the Settlement Aggrieved Group
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1 as follows: (a) individuals who are members of the Settlement Class, only, will be
2 provided notice in the form of the proposed Class Notice attached hereto as Exhibit A;
3 (b) individuals who are members of both the Settlement Class and the Settlement
4 Aggrieved Group will be provided notice in the form of the proposed Class-SAG Notice
5 attached hereto as Exhibit B; and (c) individuals who are members of the Settlement
6 Aggrieved Group, only, will be provided notice in the form of the proposed SAG Notice
7 attached hereto as Exhibit C. The Parties believe and agree that the following proposed
8 procedures will provide the best practicable notice to the Settlement Class and the
9 Settlement Aggrieved Group:

10 1. No later than 20 business days after the date of the entry of the Preliminary
11 Approval Order, Medical Solutions shall provide the Class-SAG Lists to the Claims
12 Administrator.

13 2. Neither Medical Solutions nor the Claims Administrator shall provide the
14 identification of Settlement Class Members or SAG Members to the Representative
15 Plaintiff, Class Counsel, any other Settlement Class Member, any other SAG Member,
16 or to any other person or entity. However, before the Claims Administrator provides
17 notice to the Settlement Class Members and SAG Members as outlined below, it will
18 advise the Parties of the total number of Settlement Class Members, the total number of
19 SAG Members, and the total number of workweeks on the Class-SAG Lists.

20 3. If Medical Solutions and the Claims Administrator determine, based upon
21 further review of available data, that a person previously identified as being a Settlement
22 Class Member and/or SAG Member should not be so included, or if they identify a
23 person who should have been included as a Settlement Class Member and/or SAG
24 Member but was not so included, Medical Solutions and the Claims Administrator shall
25 promptly delete or add such person as appropriate and immediately notify Class
26 Counsel prior to such deletions or additions (and the reasons therefore).

1 4. After receipt of the Class-SAG Lists and prior to mailing, the Settlement
2 Administrator will perform a search based on the National Change of Address Database
3 for information to update and correct for any known or identifiable address changes.

4 5. No later than 30 business days after the date of entry of the Preliminary
5 Approval Order, the Claims Administrator shall send the Class Notice Packet
6 (containing either the Class Notice or the Class-SAG Notice, as appropriate) to all
7 Settlement Class Members via first-class mail, postage prepaid, using the most current
8 mailing address information available as contained in the Class-SAG Lists, or as
9 updated following the NCOA search. Additionally, and also not later than 30 business
10 days after the date of entry of the Preliminary Approval Order, the Claims Administrator
11 shall send the SAG Notice to those individuals who are members of the Settlement
12 Aggrieved Group, only, via first-class mail, postage prepaid, using the most current
13 mailing address information available as contained in the Class-SAG Lists, or as
14 updated following the NCOA search.

15 5. Any Class Notice Packets and/or SAG Notices returned to the Claims
16 Administrator as non-delivered before the expiration of the Opt-Out Period shall be sent
17 to the forwarding addresses affixed thereto. If no forwarding address is provided for a
18 Class Notice Packet and/or SAG Notice that is returned as non-delivered, then such
19 Class Notice Packet and/or SAG Notice will be re-sent by the Claims Administrator
20 after the address is updated using customary skip-trace procedures based on the
21 individual's social security number and other available data, including address searches
22 using public and proprietary electronic resources which collect their data from various
23 sources such as utility records, property tax records, motor vehicle registration records,
24 and credit bureaus. Undelivered Class Notice Packets and/or SAG Notices will be re-
25 sent within 5 business days after the Claims Administrator receives notice that the Class
26 Notice Packet and/or SAG Notice was undeliverable.

1 6. The objection deadline shall not be extended for members of the
2 Settlement Class whose original notices are re-mailed pursuant to paragraph IV.E.5.

3 7. Other than the obligations set forth in this Settlement Agreement, Buford,
4 Class Counsel, Medical Solutions, Defense Counsel, and the Claims Administrator shall
5 have no additional obligation to identify or locate any Settlement Class Members or
6 SAG Members, or have any liability in connection with the provision of information to
7 the Claims Administrator or otherwise.

8 8. Requests for Exclusion/Opt Outs. The Class Notice and the Class-SAG
9 Notice shall provide that Settlement Class Members who wish to exclude themselves
10 from the Settlement Agreement must return an Opt-Out Form to the Claims
11 Administrator by mail, postmarked on or before the expiration of the Opt-Out Period.
12 Such written request for exclusion must contain all of the information requested on the
13 Opt-Out Form. The Opt-Out Form must be personally signed by the Settlement Class
14 Member who seeks to opt out. No opt-out request may be made on behalf of more than
15 one Settlement Class Member. The postmark date of the mailing envelope shall be the
16 exclusive means used to determine whether an Opt-Out Form has been timely submitted
17 and the Claims Administrator shall have the sole power to determine timeliness or
18 validity of an opt-out, but may confer with counsel for the Parties in reaching that
19 determination. Any Settlement Class Member who opts out of the Settlement
20 Agreement will not be entitled to any Settlement Award attributable to his or her
21 membership in the Settlement Class; however, such individuals will still be entitled to
22 Settlement Awards attributable to their membership in the Settlement Aggrieved Group,
23 if applicable. Further, any Settlement Class Member who opts out of the Settlement
24 Agreement will not be bound by the Settlement Agreement, except with regard to those
25 terms of the Settlement Agreement affecting such individuals' rights and obligations as
26 SAG Members, if applicable. Lastly, any Settlement Class Member who opts out of the
27

1 Settlement Agreement will not have any right to object, appeal, or comment on the
2 terms of this Settlement Agreement.

3 9. Objections to Settlement. The Class Notice and the Class-SAG Notice
4 shall state that those Settlement Class Members who wish to object to the Settlement
5 Agreement should submit a written statement of objection on or before the expiration
6 of the Opt-Out Period to the Court. The Notice of Objection should include the case
7 name, case number, and the basis for the objection. Regardless of whether a Settlement
8 Class Member has complied with this procedure, he or she will be permitted to speak
9 to the Court at the Settlement Fairness Hearing.

10 10. No Encouragement of Objections, Opt-Outs, or Appeals. At no time shall
11 any of the Parties or their counsel seek to solicit or encourage members of the Settlement
12 Class to opt-out, or to appeal from the Final Approval Order and Final Judgment.

13 11. Right to Rescission In Event of Excess Opt-Outs. Notwithstanding any
14 other provision of this Settlement Agreement, Medical Solutions shall retain the right,
15 in the exercise of its sole discretion, to nullify the Settlement Agreement within 10
16 business days of receipt of the Opt-Out Report as detailed in paragraph IV.F.2., below,
17 if more than 5% of Settlement Class Members opt out of the Settlement Agreement
18 pursuant to paragraph IV.E.8., above. In the event of such a rescission, no Party may
19 use the fact that any Party agreed to settle this case as evidence of Medical Solutions'
20 liability in this lawsuit or the lack thereof, or that class certification is proper for any
21 purpose other than settlement. If Medical Solutions exercises its right to rescission
22 under this paragraph, it shall bear all settlement administration costs incurred through
23 the date of rescission.

24 **F. Reports by the Claims Administrator.**

25 1. Weekly Reports. Starting on the date that the Claims Administrator
26 receives the Class-SAG Lists, the Claims Administrator shall provide weekly reports to
27 counsel for the Parties detailing the progress of the claims process outlined herein.

1 2. Opt-Out Report by the Claims Administrator. No later than 10 business
2 days after the Opt-Out Period expires, the Claims Administrator shall provide counsel
3 for the Parties with a declaration setting forth: (a) due diligence and proof of mailing of
4 the Class Notice Packets and the SAG Notice; (b) the total amounts to be paid to the
5 Settlement Class and the Settlement Aggrieved Group; and (c) the total number of
6 Settlement Class Members who timely mailed Opt-Out Forms or objections to the
7 Settlement Agreement (“Opt-Out Report”), along with the complete copies of all Opt-
8 Out Forms and objections received, including the postmark dates for each. The Parties
9 may challenge the validity of any returned Opt-Out Form and the Claims Administrator
10 will be the sole arbiter of its validity.

11 **G. Motion for Final Approval.**

12 Buford will file with the Court a motion for final approval of this Settlement no
13 later than 35 calendar days before the date of the Settlement Fairness Hearing, which
14 will be set by the Court.

15 **H. Settlement Fairness Hearing.**

16 After expiration of the Opt-Out Period, the Court shall conduct a Settlement
17 Fairness Hearing to determine final approval of the Settlement Agreement along with
18 the amounts properly payable for: (i) Class Counsel’s attorneys’ fees and costs; (ii) the
19 Incentive Award to Buford; (iii) Claims Administration Costs; and (iv) the PAGA
20 Payments. Upon final approval of the Settlement Agreement by the Court at or after the
21 Settlement Fairness Hearing, the Parties shall present a final order to the Court for its
22 approval and entry. After entry of the Final Approval Order, the Court shall have
23 continuing jurisdiction over the Action for purposes of addressing: (i) settlement
24 administration matters; (ii) such post-Final Approval Order matters as may be
25 appropriate under Court rules or as set forth in this Settlement Agreement; and (iii)
26 ruling on the stipulated request for Final Judgment of the entire Action when all aspects
27 of the Settlement Agreement have been consummated. Within 10 calendar days of entry
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1 of the Final Approval Order, Class Counsel will submit a copy thereof to the LWDA as
2 required by Labor Code § 2699(1)(3).

3 **V. SETTLEMENT FUND AND SETTLEMENT AWARD CALCULATION**

4 **A. Gross Settlement Amount.**

5 1. Medical Solutions shall pay the Gross Settlement Amount of
6 \$1,150,000.00 to settle this Action. In no event shall the Gross Settlement Amount
7 exceed that sum. The Gross Settlement Amount is based in part on the following:

8 a. Settlement Class: 18,084 workweeks and 774 potential Settlement Class
9 Members with an average base rate of pay of \$20.95 per hour from May
10 10, 2014 through July 17, 2019, assuming a pro rata increase through the
11 end date of the Settlement Class Period and a 10% margin of error. If the
12 margin of error is beyond 10%, the Parties will meet and confer to shorten
13 or lengthen the Settlement Class Period to accommodate settlement as a
14 first option.

15 b. Settlement Aggrieved Group: 23,560 workweeks and 1,333 potential SAG
16 Members from August 28, 2018 through July 17, 2019, assuming a pro
17 rata increase through the end date of the SAG Period and a 10% margin of
18 error. If the margin of error is beyond 10%, the Parties will meet and confer
19 to shorten or lengthen the SAG Period to accommodate settlement as a first
20 option.

21 2. Deposit. Ten business days after the Effective Date, Medical Solutions
22 shall deliver via wire transfer to the Claims Administrator the Gross Settlement Amount
23 plus its share of employer-side payroll taxes. Immediately upon receipt by the Claims
24 Administrator, these funds shall be transferred into a Qualified Settlement Fund
25 Account. No Party shall have any further obligation for any payment under this
26 Settlement Agreement to Buford, the Settlement Class Members, the SAG Members,
27 Class Counsel, or the Claims Administrator.

1 3. Disbursement by Claims Administrator. All disbursements hereunder shall
2 be made from the Qualified Settlement Fund Account, and only the Claims
3 Administrator shall be authorized to make withdrawals or payments from that account.

4 4. Payroll Taxes. The Gross Settlement Amount will not cover Medical
5 Solutions' share of employer-side payroll taxes on the Settlement Awards paid to the
6 Authorized Claimants. Such taxes shall be borne by Medical Solutions, exclusive of the
7 Gross Settlement Amount.

8 5. Payments from the Gross Settlement Amount. Subject to Court approval
9 and for purposes of effectuating this Settlement Agreement, the following amounts shall
10 be paid by the Claims Administrator from the Gross Settlement Amount:

11 a. Incentive Award: Subject to Court approval, in exchange for Buford's
12 release of all claims in the Personal Release and covenant not to sue (as
13 described below), and in addition to her individual Settlement Award as an
14 Authorized Claimant, \$7,500.00 will be paid to Buford as an Incentive
15 Award for her efforts in bringing and prosecuting this matter. The
16 Qualified Settlement Fund Account shall issue an IRS Form 1099 for this
17 payment. The Claims Administrator shall pay the Incentive Award
18 approved by the Court within 10 business days after deposit of the Gross
19 Settlement Amount by Medical Solutions. Any amounts not approved by
20 the Court as an Incentive Award up to the amount set forth in this
21 paragraph shall be added back to the NSA. As part of her consideration for
22 the Incentive Award, Buford covenants and agrees not to assert any claim
23 released by the Personal Release, or to commence, join in, or voluntarily
24 assist in a lawsuit or adversary proceeding against the Released Parties, or
25 any of them, arising out of or regarding the claims released by the Personal
26 Release.

27 b. Class Counsel Attorneys' Fees and Costs: Class Counsel shall make a
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1 motion for reasonable attorneys' fees and costs incurred in the Action,
2 which shall be heard concurrently with the motion for final approval of the
3 settlement. The attorneys' fees requested by Class Counsel shall not
4 exceed 25% of the Gross Settlement Amount, or \$287,500.00. This amount
5 will compensate Class Counsel for work already performed and all
6 remaining work to be performed in the Action. Class Counsel's separate
7 request for reimbursement of costs shall not exceed \$15,000.00.

8 i. Medical Solutions and its attorneys agree not to oppose any
9 application or motion by Class Counsel for their attorneys' fees and
10 costs up to the sums set forth herein, so long as any such application
11 or motion is consistent with the provisions of this Settlement
12 Agreement, and Class Counsel agrees not to petition the Court for
13 any additional payments for fees, costs, or interest.

14 ii. The Claims Administrator shall pay the attorneys' fees and costs
15 approved by the Court from the Gross Settlement Amount within 10
16 business days after its deposit. Any amounts not approved by the
17 Court in attorneys' fees and costs, up to the amounts set forth herein,
18 shall be added back to the NSA.

19 iii. The attorneys' fees and costs approved by the Court shall constitute
20 full satisfaction of Medical Solutions' obligations to pay amounts to
21 any person, attorney, or law firm for attorneys' fees, expenses, or
22 costs incurred in this Action on behalf of Buford, the Settlement
23 Class, and/or the Settlement Aggrieved Group, and shall relieve
24 Medical Solutions from any other claims or liability to any other
25 attorney or law firm for any attorneys' fees, expenses, and/or costs
26 to which any of them may claim to be entitled on behalf of Buford,
27 the Settlement Class, and/or the Settlement Aggrieved Group.
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1 Buford further agrees that any allocation of fees between or among
2 Class Counsel and any other attorney representing a plaintiff, the
3 Settlement Class, and/or the Settlement Aggrieved Group shall be
4 the sole responsibility of Class Counsel, and Buford agrees to hold
5 harmless Medical Solutions from any claim by any other individual,
6 entity, or other third party seeking any additional attorneys' fees or
7 costs.

8 iv. An IRS Form 1099 shall be provided to Class Counsel for the
9 payments made to Class Counsel. Class Counsel shall be solely
10 responsible to pay any and all applicable taxes on the payments
11 made to Class Counsel. Medical Solutions makes no representations
12 or warranties regarding the tax consequences resulting from any
13 payments made to Class Counsel. Class Counsel agrees to hold
14 harmless Medical Solutions, the Claims Administrator, and the
15 Qualified Settlement Fund Account from any claim or liability for
16 taxes, penalties, or interest for which Class Counsel is responsible
17 as a result of the payment made to Class Counsel.

18 c. Claims Administration Costs: All Claims Administration Costs shall be
19 paid from the Gross Settlement Amount in an amount not to exceed
20 \$25,000.00. Any amounts not approved by the Court in Claims
21 Administration Costs, up to the amount set forth in this paragraph, shall be
22 added back to the NSA. The Parties agree to cooperate in the settlement
23 administration process and to make all reasonable efforts to control and
24 minimize the Claims Administration Costs. The Claims Administrator
25 shall pay itself the Claims Administration Costs approved by the Court
26 within 10 business days after the deposit of the Gross Settlement Amount.

27 d. PAGA Payments: The PAGA Payments shall total \$210,000.00, allocated
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1 between the Settlement Class and Settlement Aggrieved Group as follows:

2 i. Settlement Class: \$10,000.00, of which 75% or \$7,500.00 shall be
3 paid to the LWDA within 10 business days after the deposit of the
4 Gross Settlement Amount. The remaining 25% or \$2,500.00 shall
5 be added back to the NSA.

6 ii. Settlement Aggrieved Group: \$200,000.00, of which 75% or
7 \$150,000.00 shall be paid to the LWDA within 10 business days
8 after the deposit of the Gross Settlement Amount. The remaining
9 25% or \$50,000.00 shall be distributed to the SAG Members
10 according to the formula described in paragraph V.B.1.b., below.

11 **B. Settlement Awards to Authorized Claimants; Formula.**

12 1. Solely for purposes of effectuating this Settlement Agreement and in
13 exchange for the release of the Class/SAG Released Claims, Authorized Claimants shall
14 be paid a Settlement Award as follows:

15 a. The Settlement Award to the Settlement Class Members shall be paid
16 from the NSA in the amount(s) calculated as follows: Each Settlement
17 Class Member (excluding those who validly opt-out) will be paid a pro
18 rata share of the NSA based on the number of weeks he or she worked
19 for Medical Solutions during the Settlement Class Period as a Settlement
20 Class Member (at facilities operated by Sutter Health), divided by the
21 total number of workweeks worked by all Settlement Class Members
22 (excluding those who validly opt-out) during the Settlement Class Period
23 (at facilities operated by Sutter Health). Each of the amounts in this
24 section is subject to change depending on the final tally of Authorized
25 Claimants.

26 b. The Settlement Award to the SAG Members shall be paid from the
27 \$50,000 SAG Fund in the amount(s) calculated as follows: Each SAG
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1 Member will be paid a pro rata share of the \$50,000 SAG Fund based on
2 the number of weeks he or she worked for Medical Solutions during the
3 SAG Period as an SAG Member (at facilities other than those operated
4 by Sutter Health), divided by the total number of workweeks worked by
5 all SAG Members during the SAG Period (at facilities other than those
6 operated by Sutter Health).

7 2. The Claims Administrator shall be responsible for determining eligibility
8 for, and the amount of, the Settlement Awards to be paid to the Authorized Claimants.
9 Settlement Awards shall be paid to Authorized Claimants no later than 10 business days
10 after the deposit of the Gross Settlement Amount.

11 3. The Settlement Awards shall be treated by all Parties as follows:

12 a. The Settlement Awards paid to the Authorized Claimants within the
13 Settlement Class shall be treated as two-thirds non-wage penalties and
14 interest, to be reported to the Authorized Claimant on an IRS Form 1099
15 and shall not be subject to withholdings, and one-third wages, subject to
16 withholdings, to be reported to the Authorized Claimant on an IRS Form
17 W-2.

18 b. The Settlement Awards to the Authorized Claimants within the Settlement
19 Aggrieved Group shall be treated as two-thirds non-wage penalties and
20 one-third interest, to be reported to the Authorized Claimants on an IRS
21 Form 1099, and shall not be subject to withholdings.

22 4. Authorized Claimants shall be solely and legally responsible to pay any
23 and all applicable taxes on the payments made to them. Medical Solutions makes no
24 representations or warranties regarding the tax consequences or obligations resulting
25 from any payments made to Authorized Claimants.

26 5. All eligibility and Settlement Award determinations shall be based on
27 personnel and payroll data that Medical Solutions will make available as needed to the
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1 Claims Administrator. Settlement Class Members and SAG Members shall have an
2 opportunity to dispute the personnel and payroll information as reflected in the Class
3 Notice, Class-SAG Notice, or SAG Notice, as appropriate. The Claims Administrator
4 shall have the sole authority to resolve any such disputes, and may consult with Class
5 Counsel and Defense Counsel in doing so. Any Settlement Awards that are
6 undeliverable to Authorized Claimants shall be distributed to the State of California
7 Controller Unclaimed Property Fund (“UPF”).

8 6. All checks for Settlement Awards shall remain valid and negotiable for
9 180 days from the date of their issuance. The Claims Administrator will include with
10 the checks a letter stating that the check must be cashed or deposited within 180 days.
11 The funds represented by Settlement Award checks returned as undeliverable and those
12 Settlement Award checks remaining un-cashed for more than 180 days after issuance
13 shall be retained by the Claims Administrator. Any amounts from settlement checks
14 that remain uncashed and otherwise unclaimed shall be paid to the UPF.

15 7. The aggregate amount of the Settlement Awards paid to Authorized
16 Claimants within the Settlement Class shall not under any circumstances exceed the
17 NSA, and the aggregate amount of the Settlement Awards paid to Authorized Claimants
18 within the Settlement Aggrieved Group shall not under any circumstances exceed the
19 \$50,000 SAG Fund.

20 8. Any Settlement Class Member who accepts any payment pursuant to the
21 Settlement will be deemed to have opted in to the Settlement Class for purposes of the
22 FLSA and to have waived and released any FLSA claim and all other claims as set forth
23 in the Class Released Claims. There shall be language included on the back of the check
24 that states the following:

25 For payments to Authorized Claimants within the Settlement Class:

26 By endorsing this check, I hereby consent to join the Action
27 entitled *Buford v. Medical Solutions, L.L.C.*, Case No. 4:18-
28 cv-04864-YGR, in the Northern District of California, and to

1 release all FLSA claims arising from the factual allegations in
2 the First Amended Complaint, for the Settlement Class
3 Period. By participating in this Settlement and not having
4 previously opted out, I also understand that I have already
5 released all other Class Released Claims that were asserted or
6 that could have been asserted in this Action, including the
7 Class Released Claims described in the Class Notice mailed
8 to me pursuant to the Settlement Agreement.

9 For payments to Authorized Claimants within the Settlement Aggrieved Group:

10 Paid pursuant to the court approved Settlement in *Buford v.*
11 *Medical Solutions, L.L.C.*, Case No. 4:18-cv-04864-YGR,
12 Northern District of California.

13 **C. Taxes.**

14 1. Withholding and Reporting Requirements. The Claims Administrator shall
15 be responsible for ensuring that all taxes associated with this Settlement Agreement are
16 timely paid to the appropriate tax authorities. The Claims Administrator's
17 responsibilities include the following: (i) filing all federal, state, and local tax
18 deductions; (ii) timely and proper filing of all required federal, state and local forms
19 with the appropriate taxing authorities; and (iii) completing any other steps necessary
20 for compliance with any tax obligations of the Settlement under federal, state, and/or
21 local law, as applicable. To verify the Claims Administrator's compliance with the
22 foregoing withholding and reporting requirements, as soon as administratively
23 practicable, the Claims Administrator shall furnish Class Counsel and Defense Counsel
24 with copies of all forms detailing the payment of taxes sufficient to prove that such
25 payments were properly remitted. The Claims Administrator shall provide a final
26 accounting declaration adequate to demonstrate full compliance with all duties set forth
27 in this Settlement Agreement, including, but not limited to, tax withholding, payment,
28 and reporting obligations.

2. Determination and Payment of Taxes. The Claims Administrator shall
determine the amount of any taxes to be withheld from each Authorized Claimant's

1 Settlement Award and issue the appropriate IRS Forms to the Authorized Claimant. All
2 such withholdings shall be remitted by the Claims Administrator to the proper
3 governmental taxing authorities. Each Authorized Claimant shall be responsible for any
4 tax consequences of any funds paid out to him or her pursuant to this Settlement
5 Agreement.

6 3. Circular 230 Disclaimer. Each Party to this Settlement Agreement (for
7 purposes of this paragraph, only, referred to as the “Acknowledging Party”; and each
8 Party to this Settlement Agreement other than the Acknowledging Party, an “Other
9 Party”) acknowledges and agrees that (1) no provision of this Settlement Agreement,
10 and no written communication or disclosure between or among the Parties or their
11 attorneys and other advisors, is or was intended to be, nor shall any such communication
12 or disclosure constitute or be construed or be relied upon as, tax advice within the
13 meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
14 amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its
15 own, independent legal and tax advisers for advice (including tax advice) in connection
16 with this Settlement Agreement, (b) has not entered into this Settlement Agreement
17 based upon the recommendation of any Other Party or any attorney or advisor to any
18 Other Party, and (c) is not entitled to rely upon any communication or disclosure by any
19 attorney or adviser to any Other Party to avoid any tax penalty that may be imposed on
20 the Acknowledging Party; and (3) no attorney or adviser to any Other Party has imposed
21 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
22 strategies (regardless of whether such limitation is legally binding) upon disclosure by
23 the Acknowledging Party of the tax treatment or tax structure of any transaction,
24 including any transaction contemplated by this Settlement Agreement.

25 4. Completion of and Report on Settlement Administration. Administration
26 of the Settlement Agreement shall be completed on or before the eleventh business day
27 after the deposit of the Gross Settlement Amount. Upon completion of administration
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1 of the Settlement Agreement, the Claims Administrator shall provide written
 2 certification of such completion and provide proof of payment at the request of the
 3 Court and/or counsel for the Parties. The Claims Administrator shall also furnish
 4 counsel for the Parties with a report showing the amounts and dates of each payment.

5 **VI. RELEASES**

6 Pursuant to this Settlement, Representative Plaintiff, the Settlement Class
 7 Members who do not timely and validly opt-out of this Settlement, the SAG Members,
 8 and all persons purporting to act on their behalf or purporting to assert a claim under or
 9 through them, including, but not limited to their spouses, dependents, attorneys, heirs
 10 and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees,
 11 conservators, guardians, personal representatives, and successors-in-interest, whether
 12 individual, class, collective, representative, legal, equitable, direct or indirect, or any
 13 other type or in any other capacity fully, finally, and forever settle, compromise, and
 14 discharge the Released Parties of the Class/SAG Released Claims and, for the
 15 Representative Plaintiff, of the claims in the Personal Release. Upon the final approval
 16 by the Court of this Settlement Agreement and by operation of the Agreement's terms,
 17 and except as to such rights or claims as may be created by this Agreement:

- 18 a. All Settlement Class Members who do not timely and validly opt-out of
 19 this Settlement fully release and forever discharge the Released Parties
 20 from all Class Released Claims during the Settlement Class Period.
- 21 b. All SAG Members fully release and forever discharge the Released Parties
 22 from all SAG Released Claims during the SAG Period.

23 **VII. FAILURE OF SETTLEMENT; IMPACT OF APPELLATE REVIEW**

24 A. Invalid without Court Approval. In the event this Settlement Agreement is
 25 not approved by the Court, it shall be deemed null and void, of no force and effect, and
 26 of no probative or evidentiary value, and the Parties hereto represent, warrant, and
 27 covenant that it will not be used or referred to for any purpose whatsoever.

1 B. Effect of Revocation or Failure of Settlement. In the event that the
 2 Settlement does not become final for any reason, this Agreement shall be null and void
 3 and any order entered by the Court in furtherance thereof shall be treated as void *ab*
 4 *initio*. In such a case, the Parties shall return to the status quo as if they had not entered
 5 into this Settlement Agreement. The Claims Administrator will be paid by Medical
 6 Solutions for its costs through the date it is notified that the Settlement will not proceed.

7 C. Impact of Appellate Review. In the event an appeal is filed from any of the
 8 Court's Orders, or any other appellate review is sought prior to the Effective Date,
 9 administration of the Settlement Agreement shall be stayed pending final resolution of
 10 the appeal or other appellate review.

11 **VIII. PARTIES' AUTHORITY**

12 A. Authority. The signatories hereto represent that they are fully authorized
 13 to enter into this Settlement Agreement and bind the Parties to its terms and conditions.

14 B. No Signature Required by Settlement Class Members or SAG Members
 15 on Settlement Agreement. Because the Settlement Class Members and SAG Members
 16 are numerous, it is impossible or impractical to have each one execute this Agreement.
 17 The Class Notice will advise all Settlement Class Members and SAG Members of the
 18 binding nature of the releases herein, and shall have the same force and effect as if this
 19 Settlement Agreement were executed by each of them.

20 **IX. LIMITATIONS ON USE OF THIS AGREEMENT**

21 A. No Admission of Liability or Wrongdoing. Medical Solutions denies any
 22 and all claims alleged in the FAC and denies all wrongdoing and liability whatsoever.
 23 Medical Solutions maintains, among other things, that it has complied at all times with
 24 the California Labor Code, and all applicable California and federal law. This
 25 Settlement Agreement is not a concession or admission, and shall not be used against
 26 Medical Solutions as an admission or indication with respect to any claim of any fault,
 27 concession, or omission by Medical Solutions. Whether or not the Settlement
 28

1 Agreement is finally approved, neither the Agreement, nor any document, statement,
2 proceeding or conduct related to this Agreement, nor any reports or accounts thereof,
3 shall in any event be: (i) construed, offered, or admitted in evidence as, received as, or
4 deemed to be, evidence for any purpose, including, but not limited to, evidence of a
5 presumption, concession, indication or admission by Medical Solutions of any liability,
6 fault, wrongdoing, omission, concession, or damage; or (ii) disclosed or referred to for
7 any purpose, or offered or received in evidence in any further proceeding in this lawsuit,
8 or any other civil, criminal, or administrative action or proceeding against Medical
9 Solutions except for purposes of settling the Action pursuant to this Agreement and for
10 obtaining preliminary and final approval thereof. The limitations set forth in this
11 paragraph do not apply to any use of this Agreement by the Parties to enforce this
12 Settlement following final approval by the Court.

13 B. No Impact on Employee Benefit Plan, Policy or Bonus Program. Medical
14 Solutions states that the amounts paid under this Settlement Agreement will not affect
15 any previously credited hours of service under any employee benefit plan, policy, or
16 bonus program sponsored by Medical Solutions. To the extent permitted by the terms
17 of any plan as exists at the time of the payment, the amounts paid under this Agreement
18 will not form the basis for additional contributions to, benefits under, or any other
19 monetary entitlement under any Medical Solutions employee benefit plans, policies, or
20 bonus programs. Any payments made under the terms of this Agreement shall not be
21 applied retroactively, currently, or on a going forward basis as salary, earnings, wages,
22 bonuses, commissions, or any other form of compensation for the purposes of any
23 Medical Solutions employee benefit plan, policy, or bonus program. Medical Solutions
24 retains the right to modify the language of its employee benefit plans, policies, and
25 bonus programs to effect this intent and to make clear that any amounts paid pursuant
26 to this Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any
27 similar measuring term as defined by applicable plans, policies, and bonus programs for
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1 the purpose of eligibility, vesting, benefit accrual or any other purpose, and that
2 additional contributions or benefits are not required by this Agreement. Neither Medical
3 Solutions nor Buford are opining on the terms of any such plan.

4 C. No Publicity. Neither the Parties nor their counsel, without the prior
5 written approval of counsel for the other Party (which may be withheld in a Party's sole
6 discretion), shall issue, authorize, or contribute to the preparation or dissemination of
7 any press release or any other public statement or advertisement concerning this
8 Agreement or any of its terms, or sponsor or participate in any press conference,
9 interview, media appearance, or other public discussion concerning this Agreement or
10 any of its terms. If the Parties or their counsel are contacted by the press, media or any
11 industry association, they will respond only that the Action has been amicably resolved
12 to the Parties' mutual satisfaction. Any violation of this provision by Buford or Class
13 Counsel shall entitle Medical Solutions to nullify the Settlement Agreement at any time
14 before entry of the Final Approval Order. The Parties agree that, in the event of a breach
15 of this provision, the non-breaching Party shall be entitled to reasonable attorneys' fees
16 and costs incurred as a result of that breach. The foregoing does not limit Medical
17 Solutions' right to enforce this provision through an action for injunctive relief.

18 D. Various Proceedings Stayed. The Parties agree to stay all proceedings in
19 the Action, except those proceedings necessary to implement and complete the
20 Settlement, pending the Settlement Fairness Hearing to be conducted by the Court.

21 E. Use of Medical Solutions' Data and Documents. Buford and Class Counsel
22 agree that none of the documents provided to them by Medical Solutions during the
23 Action shall be used for any purpose other than the Settlement of this Action.
24 Furthermore, should Buford or Class Counsel possess any originals or copies of
25 Medical Solutions' documents, they agree to destroy or return such originals and copies
26 upon the Effective Date of the Settlement Agreement.

1 **X. MISCELLANEOUS**

2 A. No Assignment of Rights. Buford warrants and represents that she has not
3 assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate
4 to any person or entity any of the claims in the Personal Release or any rights, claims,
5 or causes of action arising out of those claims. This warranty and representation of non-
6 assignment shall survive the execution of this Settlement Agreement and entry of Final
7 Judgment in the Action. No Settlement Award shall be paid to any person or entity with
8 respect to whom Buford has assigned, transferred, or hypothecated, or purported to
9 assign, transfer, or hypothecate, any of the claims in the Personal Release or any rights,
10 claims, or causes of action arising out of those claims. In addition, Buford shall defend,
11 hold harmless, and indemnify the Released Parties, or any of them, from and against
12 any claims, damages, litigation, causes of action, and expenses, including reasonable
13 attorneys' fees, resulting from any breach by Buford of this warranty and representation,
14 or any breach by Buford of her release of claims in the Personal Release.

15 B. Construction. The Parties hereto agree that the terms and conditions of this
16 Settlement Agreement are the result of lengthy, intensive arms-length negotiations
17 between the Parties, and that this Agreement shall not be construed in favor of or against
18 any Party by reason of the extent to which any Party or his, her, or its counsel
19 participated in the drafting of this Settlement Agreement.

20 C. Captions and Interpretations. Paragraph titles or captions contained herein
21 are inserted as a matter of convenience and for reference, and in no way define, limit,
22 extend, or describe the scope of this Settlement Agreement or any provision hereof.
23 Each term of this Settlement Agreement is contractual and not merely a recital.

24 D. Modification. This Settlement Agreement may not be changed, altered, or
25 modified, except in a writing signed by the Parties hereto and approved by the Court.
26 This Settlement Agreement may not be discharged except by performance in
27 accordance with its terms or by a writing signed by the Parties hereto.

1 E. Integration Clause. This Settlement Agreement, along with its exhibit,
2 constitutes the entire agreement between the Parties relating to the Settlement and
3 transaction contemplated hereby, and the final, complete and exclusive expression of
4 the terms and conditions of their Agreement. Any and all prior or contemporaneous
5 agreements, understandings, representations, and statements, whether oral or written
6 and whether by a Party or such Party's legal counsel, are hereby superseded and merged
7 herein. No rights hereunder may be waived except in writing.

8 F. Binding on Assigns. This Settlement Agreement shall be binding upon and
9 inure to the benefit of the Parties hereto and their respective heirs, trustees, executors,
10 administrators, successors, and assigns.

11 G. Enforcement. The Parties agree that following entry of the Final Judgment,
12 this Settlement Agreement shall be enforceable by the Court and the Court shall retain
13 exclusive and continuing jurisdiction of this Action over all Parties, the Settlement
14 Class Members (excluding those who validly opt out), and the SAG Members to
15 interpret and enforce the terms, conditions, and obligations of the Settlement
16 Agreement. This Agreement may be pleaded or asserted by or on behalf of Medical
17 Solutions as a defense and complete bar to any action or claim that may be brought
18 against or involve Medical Solutions by anyone acting or purporting to act on behalf of
19 Buford, the Settlement Class Members (excluding those who validly opt out), and/or
20 the SAG Members with respect to any matters within the scope of this Settlement
21 Agreement and excepting only the obligations of the Parties under this Settlement
22 Agreement.

23 H. Counterparts. This Settlement Agreement may be executed in
24 counterparts, and when each Party has signed and delivered at least one such
25 counterpart, each counterpart shall be deemed an original, and, when taken together
26 with other signed counterparts, shall constitute one Settlement Agreement, which shall
27
28

1 be binding upon and effective as to all Parties. This Settlement Agreement will become
2 effective on the date when the last person signs and dates it.

3 I. Governing Law. All terms of this Settlement Agreement shall be governed
4 by and interpreted according to the laws of the State of California and the United States
5 of America, where applicable.


6 DATED: December 9, 2019	 <hr/> LAURA BUFORD, for herself, the Settlement Class, and the Settlement Aggrieved Group
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10 DATED: December __, 2019	<hr/> STEPHEN PEDERSEN, General Counsel, on behalf of Medical Solutions, L.L.C.
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5 of America, where applicable.

6 DATED: December ____, 2019
7
8 LAURA BUFORD, for herself, the
9 Settlement Class, and the Settlement
Aggrieved Group

10 DATED: December 6, 2019
11
12 
STEPHEN PEDERSEN, General
Counsel, on behalf of Medical Solutions,
L.L.C.

1 **APPROVED AS TO FORM**

2
3 

4 Zachary Crosner, Esq.
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DATED: December 9, 2019
Attorneys for Plaintiff
Laura Buford, the Settlement Class, and
the Settlement Aggrieved Group

11 /s/ Sarah Kroll-Rosenbaum

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