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7 *Attorneys for Defendants Medliant and Medliant Inc.*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 ELIAHKIM MABUTE and JEDDY ANNE
11 DELGADO, on behalf of themselves, those
12 similarly situated, and the Proposed Rule 23
Class,

Case No.:

NOTICE OF REMOVAL

13 Plaintiffs,

14 vs.

15 MEDLIANT INC. and MEDLIANT,

16 Defendants.

17 Under 28 U.S.C. §§ 1441, 1446, and 1453, the defendants, Medliant Inc. and Medliant
18 (collectively, “Medliant”), remove this action to the United States District Court for the District
19 of Nevada. Under 28 U.S.C. §§ 1331 and 1332, Medliant respectfully states the grounds for
20 removal are as follows.

21 1. On November 8, 2023, the plaintiffs, Eliahkim Mabute and Jeddy Anne Delgado
22 (collectively, “Plaintiffs”), filed their Class and Collective Action Complaint in the action styled
23 Mabute et al. v. Medliant, Inc., et al., and assigned Case No. A-23-881156-C (the “Action”) in
24 the District Court for Clark County, Nevada.

25 2. On November 22, 2023, Plaintiffs filed their First Amended Class and Collective
26 Action Complaint.

27 3. On November 30, 2023, Plaintiffs requested the Clerk of Court for the District
28 Court of Clark County issue summons to Medliant, which it did on December 4, 2023.

1 13. Plaintiffs allege that there are “in excess of 100 Class Members within the
2 applicable statute of limitations.” Amended Complaint at ¶ 124(A). A claim under the
3 Trafficking Victims Protection Act has a 10-year limitations period. 18 U.S.C. § 1595(c). Over
4 the past 10 years, Medliant avers that it has had at least 150 employees that signed employment
5 contracts with liquidated damages provisions.

6 14. **Minimum Diversity Exists.** Plaintiffs allege that they are citizens of the
7 Philippines. Amended Complaint at ¶¶ 13–14. If they were deemed citizens of the place where
8 they reside—in both instances, Beaumont, Texas—they would be citizens of Texas. *Id.*

9 15. Plaintiffs allege that Medliant is a citizen of Nevada and Tennessee. Amended
10 Complaint at ¶¶ 15–16.

11 16. As a result, no Plaintiff is a citizen of the same state as any Defendant.

12 17. In addition to Texas, Medliant employs nurses who fall within the class definition
13 in the states of Missouri, Arizona, and Arkansas who could supply the requisite minimal
14 diversity.

15 18. **The Amount in Controversy Exceeds \$5,000,000.** Plaintiffs seek multiple
16 forms of relief that put more than \$5,000,000 at issue. The amount in controversy is not the
17 amount a plaintiff will recover or the minimum a plaintiff could recover; instead, it is a
18 reasonable estimate of the maximum a plaintiff could recover—the amount “at stake” in the
19 lawsuit. *Jauregui v. Roadrunner Trans. Servs., Inc.*, 28 F.3d 989, 994 (9th Cir. 2022). If a form
20 of relief is reasonably available, then that relief counts towards to amount in controversy, even
21 if recovery is not likely. *Id.* at 993–94. Future damages are also part of this calculation. *See*
22 *Chavez v. JPMorgon Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018).

23 19. Plaintiffs demand four forms of relief: compensatory damages, punitive damages,
24 attorneys’ fees, and injunctive relief. Each adds to the amount in controversy. Each of these
25 categories of demanded relief increases the amount in controversy.

26 20. Medliant denies that Plaintiffs are entitled to any damages or relief of any of these
27 types. The following discussion is solely for the purpose of demonstrating that Plaintiffs’
28 allegations put certain types and amounts of damages and other relief in controversy. Medliant

1 reserves all rights to challenge the award of any forms of relief and the amount or terms of such
2 relief and do not concede that the types and numbers below are appropriate for this case.

3 21. As to **compensatory damages**, Plaintiffs demand “any penalty Plaintiffs paid to
4 Defendant as emotional distress and other damages.” Amended Complaint at ¶¶ 132, 138, 143,
5 148.

6 22. Emotional distress damages under the Trafficking Victims Protection Act, 18
7 U.S.C. § 1589 *et seq.* are often awarded on a per-day basis, and damages awards can exceed
8 \$150 per day. “The range for awards spans between \$170 per day to \$800 per day.” West v.
9 Butikofer, No. 19-CV-1039-CJW-KEM, 2020 WL 5245226 at *10 (N.D. Iowa Aug. 18, 2020)
10 (collecting cases from around the country).

11 23. Even though Plaintiffs are not entitled to any damages, Mediant proposes using
12 \$150 per day as an estimate for the amount in controversy exercise. Plaintiffs’ claims put three
13 years at issue for each class member. Amended Complaint at ¶ 7. If the Court were to award
14 emotional distress damages for 200 days per year (assuming 4 days of work per week with 2
15 week of vacation)¹, each class member puts 600 days at issue.² Awarding each of 100 class
16 members \$150 per day for 600 days equals \$9 million.³

17 24. Though not necessary to establish the amount in controversy, Plaintiffs seek other
18 forms of compensatory damages as well, such as lost wages. Amended Complaint at ¶ 158.
19 Plaintiff Delgado claims to have been underpaid by \$22 per hour. Id. at ¶ 108. Even if that
20 number were reduced by more than half to \$10 per hour, it would put an additional \$52,000 in
21 controversy for each class member, under the assumption that a putative class member is
22 underpaid across the entire 5,200 hour “term” Plaintiffs allege.⁴ Id. at ¶ 24. Assuming a
23 minimum class size of 100, the lost wages claim puts \$5.2 million at issue.⁵

24
25 ¹ (50 weeks) X (4 days per week) = 200 days per year.

26 ² (200 days per year) X (3 years) = 600 days.

27 ³ (600 days per class member) X (\$150 per day) X (100 class members) = \$9,000,000.

28 ⁴ (5,200 hour contractual term per class member) X (\$10 alleged underpayment per hour) = \$52,000.

⁵ (\$52,000 per class member) X (100 class members) = \$5,200,000.

1 25. According to Plaintiffs, any putative class member that does not work the full
2 5,200 term is subject to paying liquidated damages of “up to \$80,000” plus additional amounts.
3 Amended Complaint at ¶ 7. According to Plaintiffs, a putative class member who did not put
4 an underpayment claim in controversy would put a claim to recover the liquidated damages in
5 controversy. See, e.g., Amended Complaint at ¶ 138.

6 26. The compensatory damages alone exceed the \$5,000,000 threshold for the
7 amount in controversy at least twice over.

8 27. **Punitive damages** also count towards the amount in controversy. Greene v.
9 Harley-Davidson, Inc., 965 F.3d 767, 772 (9th Cir. 2020). One way that a defendant can
10 estimate the value of punitive damages in controversy “is to cite a case based on the same or a
11 similar statute in which the jury or court awarded punitive damages based on the punitive-
12 compensatory damages ratio relied upon by the defendant in its removal notice.” Id.

13 28. The Ninth Circuit permits the award of punitive damages under the Trafficking
14 Victims Protection Act, 18 U.S.C. § 1589 *et seq.* Ditullio v. Boehm, 662 F.3d 1091, 1098 (9th
15 Cir. 2011) (“We therefore hold that punitive damages are available under 18 U.S.C. § 1595”).

16 29. Even though Mediant contends that Plaintiffs will not obtain punitive damages,
17 their request for punitive damages under a TVPA claim puts at least the amount of
18 compensatory damages at issue. Several courts have awarded punitive damages equal to the
19 amount of compensatory damages. See, e.g., Carazani v. Zegarra, 972 F. Supp. 2d 1, 26–27
20 (D.D.C. 2013) (“Following previous courts, which have found a 1:1 ratio of compensatory to
21 punitive damages a sufficient deterrent to offenders of the TVPA, the Court awards punitive
22 damages equal to its compensatory damages award....”).

23 30. Thus, the amount of punitive damages in controversy at least equals the amount
24 of compensatory damages, which is conservatively \$9 million in this case on the TVPA claim
25 alone. Adding \$9 million compensatory damages and \$9 million punitive damages shows that
26 \$18 million is in controversy on that single claim.

27 31. **Attorneys’ fees** provided by statute (including prospective attorneys’ fees) also
28 add to the amount in controversy. Arias v. Residence Inn by Marriott, 936 F.3d 920, 922 (9th

1 Cir. 2019). Such fees can be awarded on a TVPA claim. 18 U.S.C. § 1595. Plaintiffs demand
2 them in this case. See, e.g., Amended Complaint at ¶¶ 133, 139, 144, and 149

3 32. While the Ninth Circuit has declined to adopt a per se rule that an attorneys' fee
4 of 25% of potential damages is always appropriate, percentage-based estimates can be
5 reasonable. Arias, 936 F.3d. at 928. Twenty-five percent is a common benchmark courts often
6 apply. See Staton v. Boeing, 327 F.3d 938, 968 (9th Cir. 2003). Assuming a 10% fee, this would
7 add \$900,000 to the amount in controversy.

8 33. Departing from a percentage-based approach would require Plaintiffs to provide
9 discovery. The rates or hours expended or anticipated by Plaintiffs' counsel to perform a
10 lodestar analysis are uniquely in Plaintiffs' possession. Mediant therefore requests leave to
11 obtain discovery from Plaintiffs regarding all aspects of their attorneys' fees if Plaintiffs
12 challenge the amount in controversy on this issue and the amount in controversy is not otherwise
13 satisfied.

14 34. The cost of **injunctive relief** also adds to the amount in controversy. Plaintiffs
15 allege that Mediant's use of a liquidated damages provision violates Plaintiffs' rights.
16 Amended Complaint at ¶ 8. They allege that Mediant requires payment of liquidated damages
17 of up to \$80,000 for each worker. Id. at ¶ 7. If Mediant were enjoined from enforcing these
18 provisions and from seeking damages from employees, the cost of compliance would be the
19 greater of its lost profits or the loss of liquidated damages—which puts \$80,000 at issue for
20 each putative class member, or a further \$8,000,000 in controversy for the putative 100-member
21 class as a whole.

22 **The Procedural Requirements for Removal are Satisfied**

23 35. Under 28 U.S.C. § 1446(b), Mediant has timely filed this Notice of Removal
24 within thirty (30) days of service.

25 36. A copy of all process and pleadings heretofore filed in the state court action or
26 served upon Mediant is attached as Exhibit A. While Mediant was only served with the
27 Amended Complaint, a copy of all process and pleadings filed in the state court action are
28 included.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 28th day of December, 2023, I caused a true and correct copy of the foregoing **NOTICE OF REMOVAL** to be served via this Court’s CM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification and/or via E-mail to the following:

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