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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAREN MARTINEZ, on behalf of herself
and all other similarly situated individuals,

Plaintiff,

v.

JOHN MUIR HEALTH, and DOES 1
through 50, inclusive,

Defendants.

Case No. 4:17-cv-05779-CW

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: Oct. 6, 2017

First Amended Complaint Filed: Dec. 1, 2017

Case Assigned to: Judge Claudia Wilken

1 This Settlement Agreement and Release of Claims (“Settlement Agreement” or “Settlement”)
 2 is made and entered into by and between plaintiff Karen Martinez (“Plaintiff”), individually and on
 3 behalf of all others similarly situated, Plaintiff’s counsel of record, and defendant John Muir Health,
 4 a California nonprofit corporation (“JMH” or “Defendant”).

5 1. “**Parties**” means Plaintiff, the Class (as defined below), and Defendant.

6 2. “**Class Counsel**” are Mark Thierman, Joshua Buck and Leah Jones of Thierman Buck
 7 LLP, who are counsel of record for Plaintiff.

8 3. The “**Action**” means the above-captioned Case No. 4:17-cv-05779-CW, filed by
 9 Plaintiff against Defendant and pending in the Northern District of California (the “Court”).

10 4. “**Class Period**” and the “**Release Period**” each refer to the period beginning on
 11 October 13, 2012, and ending on the date on which this Court enters an order preliminarily
 12 approving this Settlement Agreement.

13 5. “**Class**” and “**Class Members**” are all individuals who were employed by Defendant
 14 John Muir Health or its affiliate, John Muir Physicians Network, in California during the Class
 15 Period, who worked at least one shift as a non-exempt employee in California during the Class
 16 Period, and who, according to Defendant’s records, made at least one entry into the EPIC or Midas
 17 electronic systems during the Class Period.

18 6. “**Class Notice**” means Exhibit A hereto, in the form ultimately approved by the
 19 Court.

20 7. The “**Complaint**” is Plaintiff’s First Amended Complaint, filed on December 1, 2017.

21 8. “**Settlement Class**” or “**Settlement Class Members**” are all Class Members who do
 22 not timely opt-out of the Class in the manner prescribed by the Class Notice.

23 9. The “**Effective Date**” of this Settlement Agreement shall be on the *latest* of the
 24 following dates: (a) the date of the Court’s final approval of the Settlement Agreement and entry of
 25 judgment thereon, if no objections by or on behalf of Class Members have been made or filed; (b)
 26 the date on which the time for appeal has expired, if an objection has been made or filed and no
 27 appeal has been filed; or (c) the final resolution of any appeal that has been made or filed, if an
 28 objection has been made or filed and an appeal is filed. The Parties acknowledge that any Class

1 Member who fails to make or file a timely and valid objection lacks standing to appeal from any
2 final approval order and judgment entered pursuant to the Settlement Agreement.

3 10. The “**Released Claims**” include all claims arising or accruing during the Class Period
4 that were pleaded in the Complaint or that could have been pleaded in the Action, based on the
5 factual allegations contained in the Complaint. Accordingly, the Released Claims include all claims
6 that Defendant: (1) violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. Section 207(a), by
7 failing to pay overtime to Plaintiff and the Class Members; (2) violated California Labor Code
8 Sections 558, 1179.1, 1194, 1194.2(a) and 1197 by failing pay to minimum wages to Plaintiff and
9 the Class Members (including the alleged failure to pay for all hours worked and pay the proper
10 minimum wage for all hours worked); (3) violated California Labor Code Sections 510, 558 and
11 1198 by failing to pay overtime to Plaintiff and the Class Members (including the alleged failure to
12 pay for all overtime hours worked and to pay a proper overtime rate for overtime hours worked); (4)
13 violated California Labor Code Sections 226.7 and 512 and corresponding provisions of the
14 Industrial Welfare Commission Wage Order by failing to provide meal and rest periods to Plaintiff
15 and the Class Members and/or failing to pay meal and rest period premiums owed to Plaintiff and
16 the Class Members; (5) violated California Labor Code Sections 226 and 226.3 by failing to provide
17 accurate itemized wage statements to Plaintiff and the Class Members; (6) violated California Labor
18 Code Sections 201, 202 and 203 by failing to pay all wages due upon separation of employment to
19 Plaintiff and the Class Members; (7) violated the Private Attorneys General Act (“PAGA”), found at
20 California Labor Code Sections 2698-2699.5, through each of the foregoing alleged violations of
21 California law; (8) violated Sections 202(a) and 216(b)-(c) of the FLSA by entering into individual
22 settlement agreements with some of the Class Members; and (9) engaged in unfair competition in
23 violation of California Business & Professions Code Sections 12700, et seq., through each of the
24 foregoing alleged violations of California law. In addition, and without limiting the foregoing, the
25 Released Claims include all claims that could have been pleaded based on the factual allegations
26 contained in the Complaint, such as: Defendant did not pay the Class for all “hours worked” under
27 California law and the FLSA; Defendant did not pay the Class for all overtime hours worked and/or
28 failed to compensate all overtime hours worked at a proper overtime rate of pay; Defendant did not

1 properly include bonuses and other incentive compensation in the “regular rate” for wage payment
2 purposes; Defendant interrupted employees’ meal and rest breaks, provided short or late meal or rest
3 breaks and/or did not provide the opportunity to take meal or rest breaks; Defendant did not specify
4 an accurate number of hours worked or an accurate regular rate on wage statements and/or did not
5 provide other required wage statement information; and Defendant did not pay all final wages due to
6 employees upon separation of employment, given additional wages due and owing in light of the
7 Complaint’s off-the-clock, overtime, regular rate and/or meal/rest break claims.

8 11. The “**Released Parties**” are Defendant John Muir Health and its former and present
9 parents, subsidiaries, officers, directors, and affiliates, including without limitation John Muir
10 Physicians Network, and John Muir Health’s former and present officers, directors, employees,
11 partners, attorneys, shareholders and agents, and any other successors, assigns, or legal
12 representatives.

13 12. **No Admission.** Defendant denies any liability or wrongdoing of any kind associated
14 with the claims alleged in the Action, and further denies that the Action is appropriate for class or
15 representative treatment for any purpose other than this Settlement. Defendant contends it has
16 complied at all times with the California Labor Code and the FLSA. It is Defendant’s position that,
17 if this case were to be litigated, class certification would be inappropriate because Plaintiff is not an
18 adequate class representative, the Plaintiff’s claims are not typical of putative class members, and
19 individual issues predominate over class issues. The Action, the negotiation and execution of this
20 Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance
21 of the Settlement shall not be used as an admission or evidence of wrongdoing on behalf of
22 Defendant, shall not be an admission or evidence of fault on behalf of Defendant in any action
23 before a civil, criminal, or administrative agency, and shall not be deemed to be, and may not be
24 used as, an admission or evidence of the appropriateness of these or similar claims for class
25 certification in the Action or with respect to any other proceeding. Pursuant to California Evidence
26 Code section 1152 and Federal Rule of Evidence 408, this Settlement Agreement is inadmissible in
27 any proceeding other than this Action or an action to interpret or enforce this Settlement Agreement.
28

1 13. Plaintiff and Class Counsel contend that Defendant violated the California Labor
2 Code and the FLSA and that this case is appropriate for class and collective action treatment. Class
3 Counsel have conducted a thorough investigation into the facts and law during the prosecution of
4 this case, including the exchange of voluminous formal and informal discovery and the review and
5 verification of statistical data and other facts and information provided by Defendant. Counsel for
6 the Parties have investigated the applicable law as applied to the facts discovered regarding
7 Plaintiff's claims, the potential defenses thereto, and Plaintiff's asserted damages.

8 14. On October 31, 2018, the Parties participated in a full day mediation session with
9 Mark Rudy, a respected mediator with extensive experience resolving employment actions and class
10 actions. The basic terms of the Settlement were reached on March 28, 2019, after months of
11 extensive continued mediated settlement discussions through Mr. Rudy and exchange of additional
12 information and documents.

13 15. Based on their own independent investigation and evaluation, Class Counsel are of
14 the opinion (and will so represent to the Court in a motion for preliminary approval) that settlement
15 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
16 adequate and is in the best interests of the Settlement Class in light of all known facts and
17 circumstances, including the risk of significant delay, the risk the Class will not be certified by the
18 Court, and the defenses asserted by Defendant.

19 16. The Parties agree that the class described herein may be certified and that any motion
20 for preliminary approval seeking, *inter alia*, certification of the class is for purposes of this
21 Settlement Agreement only. If for any reason the Settlement is not approved, the for-settlement-
22 purposes-only certification will have no force or effect. The Parties further agree that certification
23 for purposes of the settlement is in no way an admission that class certification is proper under the
24 more stringent standard applied for litigation and that evidence of this limited stipulation for
25 settlement purposes only will not be admissible for any purpose in this or any other proceeding.

26 17. **Total Settlement Amount:** The Parties agree to settle this Action for a non-
27 reversionary payment of exactly \$9,500,000 ("Total Settlement Amount"). The Total Settlement
28 Amount includes all payments to Settlement Class Members, attorneys' fees and costs, a service

award/general release payment to Plaintiff, actual costs of administration, all payments associated with PAGA, all penalties and interest, and all taxes on the settlement payments, *excluding only* the taxes normally borne by the employer with respect to the portion of the Individual Payment Amounts treated as wages for tax purposes.

18. **Class Member Allocation:** “Class Member Allocation” means the amount that will be divided, pro rata, as defined further below, and paid to Settlement Class Members. The Class Member Allocation is equal to the Total Settlement Amount, less the amounts approved and awarded by the Court for attorneys’ fees and litigation costs, the service award/general release payment to the Plaintiff, the payment to the LWDA pursuant to PAGA, and the costs of administering the settlement. Any amounts that would have been paid to Class Members who timely exclude themselves from the settlement (“**Opt-Out**”) will be added to the Class Member Allocation.

19. **Calculation of the Individual Payment Amounts: “Individual Payment Amount”** means the portion of the Class Member Allocation distributable to each Settlement Class Member. Based on its records, Defendant will determine the total number of recorded hours worked by each Settlement Class Member during the Class Period in a non-exempt position (for each individual, the “**Individual Total Hours Worked**”). The sum of all Settlement Class Members’ Individual Total Hours Worked shall be the “**Aggregate Hours Worked**” by the Settlement Class Members. The amount of the Class Member Allocation shall be divided by the Aggregate Hours Worked to yield the “**Per Hour Rate**.” Each Settlement Class Member’s Individual Payment Amount shall be the product of their Individual Total Hours Worked multiplied by the Per Hour Rate.

20. For tax purposes, each Individual Payment Amounts shall be allocated as 1/3 wages (for which a W-2 shall be issued), 1/3 interest and 1/3 penalties (for which the appropriate IRS form 1099 shall be issued and no withholdings shall be made).

21. \$475,000 shall be allocated to the settlement of the PAGA claims in the Complaint (“**PAGA Payment**”). Of this amount, 75%, or \$356,250, shall be paid to the LWDA, and 25%, or \$118,750, shall be part of the Class Member Allocation. The amount of the PAGA Payment is subject to Court approval and/or modification. The Parties agree that, should the Court decrease or

1 increase the amount of the PAGA Payment, that shall not affect neither the enforceability or finality
2 of this Settlement Agreement nor the Total Settlement Amount.

3 22. **Service Award/General Release Payment to Plaintiff:** The amount awarded to
4 Plaintiff as a service award, and for a general release of claims, will be set by the Court in its
5 discretion, not to exceed \$15,000. This amount will be treated as wages for tax purposes. Defendant
6 agrees not to dispute or otherwise object to the service award/general release payment requested,
7 consistent with this Settlement Agreement.

8 23. **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be in an amount
9 to be set by the Court, not to exceed 25% of the Total Settlement Amount. Defendant agrees not to
10 dispute or otherwise object to the attorneys' fee award requested by Class Counsel consistent with
11 this Settlement Agreement.

12 24. **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from the Total
13 Settlement Amount in an amount to be set by the Court for actual litigation costs and expenses.
14 Defendant agrees not to dispute or otherwise object to Class Counsel's request for actual costs and
15 expenses.

16 25. **Settlement Administration Costs:** The fees and other charges of the Settlement
17 Administrator, expected to total no more than \$42,000, and will be paid from the Total Settlement
18 Amount. These fees shall include any costs associated with the required tax reporting on all
19 Individual Payment Amounts, and the issuing of all W-2 and 1099 forms. Subject to approval of the
20 Court, the Parties have agreed that Simpluris, Inc. will serve as a neutral third-party claims
21 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
22 Settlement Class. The Settlement Administrator shall be responsible for: (a) printing and
23 distributing the Class Notice to all Class Members; (b) administering the settlement; (c) processing
24 Opt-Out submissions; (d) resolving disputes; (e) distributing the Total Settlement Amount; (f) tax
25 reporting; (g) providing weekly status reports; and (h) other duties and responsibilities set forth
26 herein.

27 26. **Release By Settlement Class Members.** Upon the Effective Date, and subject to
28 Defendant's payment of the Total Settlement Amount, all Settlement Class Members will have

released Defendant and all Released Parties from all Released Claims, including claims arising under the FLSA, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 899 F.3d 1106, 1110-11 (9th Cir. 2018) (holding opt-out release of California state law claims was res judicata against FLSA claims “which were direct federal law counterparts to the state law claims settled”). *Accord Richardson v. Wells Fargo Bank, N.A.*, 839 F.3d 442, 451-52 (5th Cir. 2016) (plaintiff who became party to the opt-out Rule 23 settlement was bound by all settlement terms, including release of FLSA claims). The Parties agree that all FLSA claims in the Complaint are wholly subsumed by the California Labor Code claims in the Complaint. For example and without limitation, the FLSA overtime claim applies to hours worked beyond 40 in a week from October 13, 2013, to the present, while the California overtime claim applies to hours worked beyond 40 in a week *and* over 8 in a day, from October 13, 2012, to the present. Plaintiff Karen Martinez and opt-in plaintiffs Tonya Fonville, Theresa Combong, Miriam Gomez-Artiga, Greta Sholachman, Elizabeth Bates, and Blanca Moran will be provided with a Class Notice, but are automatically part of the Settlement Class (*i.e.*, if they submit a timely Opt-Out, it shall be null and void).

27. **Release By Plaintiff Karen Martinez.** Upon the Effective Date, and subject to Defendant’s payment of the Total Settlement Amount, Plaintiff will have released all Released Parties as to all Released Claims. In addition, Plaintiff will provide the following additional “**General Release**”: Plaintiff, on her own behalf and on behalf of her heirs, spouses, executors, administrators, attorneys, agents and assigns, fully and finally releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the Effective Date of this Settlement Agreement. Plaintiff acknowledges that this General Release includes both known and unknown claims and, accordingly, waives Section 1542 of the California Civil Code, which provides: “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

1 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
 2 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” The significance of this General
 3 Release has been explained to Plaintiff by Class Counsel.

4 28. **Release By Class Counsel:** Upon the Effective Date, and subject to Defendant’s
 5 payment of the Total Settlement Amount, Class Counsel will have released all Released Parties from
 6 any and all claims for attorneys’ fees and expenses arising from the Action or any claims released by
 7 the Plaintiffs and Class Members, whether known and unknown, whether under federal, state and/or
 8 local law, statute, ordinance, regulation, common law, or other source of law (“Class Counsel’s
 9 Released Claims”). Class Counsel’s Released Claims include, but are not limited to, claims for
 10 attorneys’ fees and expenses arising from or dependent on the FLSA, the California Civil Code, the
 11 California Code of Civil Procedure, the California Labor Code, the wage orders of the California
 12 Industrial Welfare Commission, the California Business and Professions Code section 17200 et seq.,
 13 California Labor Code Sections 2698 et seq. (PAGA), and the California common law of contract
 14 and tort.

15 29. **Waiver Of Appeal:** Any Settlement Class Member who does not timely make or
 16 file an objection waives any and all rights to appeal from the final approval order an judgment in this
 17 case, including all rights to any post-judgment proceeding and appellate proceeding such as a motion
 18 to vacate judgment, motion for new trial, and extraordinary writs. Both Parties also waive their right
 19 to appeal any final approval order or judgment that is consistent with this Settlement Agreement.

20 30. **Notice Procedure.** Form of Notice: The Settlement Administrator shall send the
 21 Class Notice to each Class Member. The Class Notice shall contain clear instructions to Class
 22 Members regarding how they may Opt-Out of the Settlement Agreement. The Class Notice will
 23 also contain personalized information setting forth each Class Member’s Individual Total Hours
 24 Worked and estimated Individual Payment Amount.

25 31. **Mailing the Notice:** Within 45 days after entry of an order preliminarily approving
 26 this Settlement Agreement, Defendant shall send the “**Class Data**” (full names, last known mailing
 27 address, hours worked during the Class Period, and SSN, for each Class Member) to the Settlement
 28

1 Administrator. Within 14 days thereafter, the Settlement Administrator shall send the Class Notice
2 to each Class Member.

3 32. Settlement Administrator shall, as soon as practicable, re-mail any Class Notice
4 returned with a forwarding address. Settlement Administrator shall promptly perform reasonable
5 methods of skip tracing (*e.g.*, National Change of Address and/or Experian searches), to find new
6 addresses for any Class Notice returned undeliverable without a forwarding address.

7 33. A Class Member's Opt-Out must be postmarked within 45 calendar days of the
8 mailing date of the Class Notice ("**Response Deadline**"). Any Opt-Out postmarked after the
9 Response Deadline is null and void. Failure to submit a timely Opt-Out in the manner prescribed by
10 the Class Notice means that the Class Member will be a Settlement Class Member for all purposes.
11 The Response Deadline shall not be extended, for any individual or for any circumstance, absent
12 mutual agreement by the Parties and Court approval.

13 34. If a Class Member's Opt-Out is incomplete, the Settlement Administrator will give
14 the individual one chance to cure any defects *before* the Response Deadline. An incomplete and
15 uncured Opt-Out will be null and void, just like an untimely Opt-Out.

16 35. **Class Member Disputes.** To the extent a Class Member disputes any of the
17 information listed on his or her Class Notice (for example, Individual Total Hours Worked), the
18 Class Member may produce evidence to the Settlement Administrator showing such information the
19 Class Member contends should be reflected in the Class Notice. Defendant's records are presumed
20 to be correct in the absence of contrary documentation submitted by the Class Member. However,
21 and the Settlement Administrator's decision on such disputes matters will be final.

22 36. In order to object to the Settlement Agreement (to become an "**Objector**"), a Class
23 Member must: (1) *not* Opt-Out; and (2) submit a written objection to the Settlement Administrator or
24 directly to the Court, postmarked no later than the Response Deadline. The Settlement
25 Administrator shall immediately provide all materials provided by timely Objectors to counsel for
26 both Parties, and Class Counsel shall lodge any such timely submitted materials with the Court for
27 the Court's consideration. Class Members who do not submit timely written objections may appear
28 at the final approval hearing to voice their objections only with leave of Court.

37. Within ten (10) days of the Response Deadline, the Settlement Administrator shall provide to the Parties a declaration of due diligence describing in detail the mailing and response tracking process described above.

38. Defendant shall wire the Total Settlement Amount (in the amount ultimately approved by the Court) to the Settlement Administrator no later than ten (10) calendar days after the Effective Date. Defendant will add any employer-side payroll taxes in the amount wired to the Settlement Administrator. The Settlement Administrator shall disburse the Total Settlement Amount to the Settlement Class Members, Class Counsel, the LWDA, Plaintiff, and itself (for administration expenses) within ten (10) days of Defendant's transmission of the Total Settlement Amount.

39. Settlement Class Members must cash their settlement checks within 365 calendar days after the settlement checks are mailed by the Settlement Administrator. The value of any checks uncashed more than 365 days after mailing shall be transmitted by the Settlement Administrator to La Clinica (*see* www.laclinica.org/about-overview.html) as a *cy pres* recipient, subject to Court approval.

40. **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Plaintiff shall move the Court for preliminary approval of the settlement and entry of an order: scheduling a hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the Class Members; approving as to form and content the proposed Class Notice; preliminarily certifying the Class for purposes of settlement; and preliminarily approving all other terms of the Settlement Agreement. Class Counsel shall submit this Settlement Agreement in support of Plaintiff's motion for preliminary approval of the settlement and shall concurrently submit it to the LWDA.

41. This Settlement Agreement and any and all negotiations that led up to the Settlement shall remain strictly confidential until the filing of Plaintiff's preliminary approval motion.

42. The Parties shall cooperate to ensure that all government entities and agencies receive timely notice of the Settlement pursuant to the Class Actions Fairness Act (CAFA).

43. **Final Approval.** Class Counsel will draft and timely submit a motion for final approval of the Settlement together with a proposed final order consistent with this Settlement

1 Agreement, which requests that the Court: approve the Settlement and hold that the terms of the
2 Settlement are fair, reasonable and adequate; approve the issuance of the payments to the Settlement
3 Class Members, Class Counsel's application for an award of attorneys' fees and reimbursement of
4 litigation costs and expenses, the service award/general release payment to the Plaintiff, the payment
5 to the LWDA, and the costs of administering the settlement; order that all Released Claims by
6 Settlement Class Members, against all Released Parties, are forever barred by the Settlement; and
7 entering judgment in this Action in accordance with this Settlement Agreement.

8 **44. Tax Issues And Qualified Settlement Fund.** This Settlement Agreement does not
9 constitute tax advice to any recipient of monies. The Parties understand and agree that the Total
10 Settlement Amount will qualify and be characterized as a Qualified Settlement Fund ("QSF") under
11 the provisions of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed
12 as a separate entity for purposes of all federal, state and local taxes, and further agree to treat the
13 QSF on a basis consistent therewith, that the QSF will be characterized as the employer of all
14 Settlement Class Members for purposes of determining all tax obligations associated with any and
15 all payments under this Settlement Agreement, and the QSF will bear full responsibility for all taxes
16 associated with the QSF and Individual Payment Amounts under this Settlement Agreement.

17 **45.** The Settlement Administrator shall be responsible for ensuring that all taxes
18 associated with the Settlement Agreement are timely paid to the appropriate authorities. The
19 Settlement Administrator's responsibilities include the following: (i) filing all federal, state and local
20 employment tax returns, income tax returns, and other tax returns associated with the taxes, (ii)
21 timely and proper filing of all required federal, state and local information returns (e.g., 1099s, W-
22 2s, etc.) with the appropriate taxing authorities, and (iii) completion of any other steps necessary for
23 compliance with any tax obligations of the QSF under federal, state and/or local law. In addition,
24 the Settlement Administrator shall timely make such elections as necessary or advisable to carry out
25 the provisions of this paragraph. Such elections shall be made in compliance with the procedures
26 and requirements contained in the QSF regulations. It shall be the responsibility of the Settlement
27 Administrator to timely and properly prepare and deliver all necessary documentation for signature
28 as may be required, and thereafter to cause the appropriate filing of such documentation to occur.

1 To the extent that, for any period of time, the QSF is not treated as a “qualified settlement fund”
 2 within the meaning of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, the Settlement
 3 Administrator shall promptly notify Class Counsel and counsel for Defendant of that fact.

4 46. All taxes (including any interest or penalties) arising with respect to income earned
 5 by the QSF, including any taxes or tax detriments that may be imposed upon or incurred by
 6 Defendant with respect to any income earned by the QSF for any period during which the QSF does
 7 not qualify as a “qualified settlement fund” for federal or state income tax purposes, shall be paid
 8 from the QSF. All expenses and costs incurred in connection with the operation and implementation
 9 of this section (including without limitation, expenses of attorneys and/or accountants and mailing
 10 and distribution expenses related to filing (or failing to file) the tax returns described herein) shall be
 11 paid from the QSF.

12 47. **Voiding the Agreement.** A failure of the Court to approve any material condition
 13 of this Settlement Agreement which effects, as a matter of law, a fundamental change to the terms of
 14 the Settlement, or if the Settlement is reversed or materially modified on appellate review, shall
 15 render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the
 16 option of any Party.

17 48. **Opt-Out Threshold.** If 1% or more of the Class Members submit a timely and valid
 18 Opt-Out, Defendant may, in Defendant’s sole discretion, void this Settlement Agreement. If
 19 Defendant elects to void this Agreement based on this section, it must provide notice to Class
 20 Counsel in writing no later than ten (10) calendar days after the Settlement Administrator gives its
 21 final report regarding the number of individuals who submitted a timely and valid Opt-Out, and
 22 Defendant must pay all actual and necessary administration expenses incurred by the Settlement
 23 Administrator through the date of Defendant’s voiding of the Settlement.

24 49. **Parties’ Authority.** The signatories hereto represent that they are fully authorized to
 25 enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

26 50. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to
 27 accomplish the terms of this Settlement Agreement, including but not limited to, execution of such
 28 documents and such other action as may reasonably be necessary to implement the terms of this

1 Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts,
2 including all efforts contemplated by this Settlement Agreement and any other efforts that may
3 become necessary by order of the Court, or otherwise, to implement this Settlement Agreement and
4 the terms set forth herein.

5 **51. No Prior Assignments.** The Parties hereto represent, covenant, and warrant that they
6 have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
7 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
8 or rights released and discharged by this Settlement Agreement.

9 **52. Construction.** The Parties hereto agree that the terms and conditions of this
10 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
11 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by
12 reason of the extent to which any Party or her or its counsel participated in the drafting of this
13 Settlement Agreement.

14 **53. Captions and Interpretations.** Paragraph titles or captions contained herein are
15 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
16 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
17 Settlement Agreement is contractual and not merely a recital.

18 **54. Modification.** This Settlement Agreement may not be changed, altered, or modified,
19 except in writing and signed by the Parties hereto, and approved by the Court. This Settlement
20 Agreement may not be discharged except by performance in accordance with its terms or by a
21 writing signed by each of the Parties hereto on their attorneys.

22 **55. Integration Clause.** This Settlement Agreement contains the entire agreement
23 between the Parties relating to the settlement and transactions contemplated hereby, and all prior or
24 contemporaneous agreements, understandings, representations, and statements, whether oral or
25 written and whether by a Party or such Party's legal counsel, are merged herein. No rights
26 hereunder may be waived except in writing. *[Signatures on following page]*
27
28

1 56. **Binding On Assigns.** This Settlement Agreement shall be binding upon and inure to
2 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
3 successors and assigns.

4 57. **Signatures of All Class Members Unnecessary to be Binding.** It is agreed that,
5 because the Class Members are numerous, it is impossible or impractical to have each Settlement
6 Class Member execute this Settlement Agreement. The Class Notice will advise all Class Members
7 of the binding nature of the release provided herein and such shall have the same force and effect as
8 if this Settlement Agreement were executed by each Settlement Class Member.

9 58. **Counterparts.** This Settlement Agreement may be executed in counterparts, and
10 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
11 deemed an original, and when taken together with other signed counterparts, shall constitute one
12 fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties.

13 59. **Non-Disclosure/Non-Publication.** Excluding all necessary filings in support of
14 preliminary and final approval, Plaintiff, Class Counsel and Defendant each agree not to disclose or
15 publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its
16 terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form,
17 directly or indirectly, to any person or entity, except to Settlement Class members and as shall be
18 contractually required to effectuate the terms of the Settlement Agreement as set forth herein.
19 However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in
20 other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case
21 number of this Action, and a general description of the Action, to a court in a declaration by Class
22 Counsel. Class Counsel may also include a general description of the Settlement on their website,
23 but may not include the name(s) of any of the Parties, or the case name or case number of the
24 Action.

25 60. **Related Cases.** The Parties agree to jointly request that this Court immediately
26 enjoin any related case (under Local Rule 3-12(a)) that is commenced after the execution of this
27 Settlement Agreement, including, but not limited to, any case that raises any Released Claims on
28 behalf of any or all Class Members against any of the Released Parties.

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IT IS SO STIPULATED AND AGREED.

Dated: May __, 2019

CAL KNIGHT, PRESIDENT AND CEO
JOHN MUIR HEALTH

Dated: May __, 2019

Plaintiff KAREN MARTINEZ

Dated: May 10, 2019

JOSHUA BUCK
THIERMAN BUCK LLP
Attorneys for Plaintiff
KAREN MARTINEZ

Dated: May __, 2019

LISA K. HORGAN
LITTLER MENDELSON, P.C.
Attorneys for Defendant
JOHN MUIR HEALTH

1 **IT IS SO STIPULATED AND AGREED.**

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4 Dated: April __, 2019

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CAL KNIGHT, PRESIDENT AND CEO
JOHN MUIR HEALTH

6 Dated: April 17, 2019

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DocuSigned by:
Karen Martinez
Plaintiff KAREN MARTINEZ

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9 Dated: April __, 2019

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JOSHUA BUCK
THIERMAN BUCK LLP
Attorneys for Plaintiff
KAREN MARTINEZ

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13 Dated: April __, 2019

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LISA K. HORGAN
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CAL KNIGHT, PRESIDENT AND CEO
JOHN MUIR HEALTH

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Plaintiff KAREN MARTINEZ

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JOSHUA BUCK
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LISA K. HORGAN
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