

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
C.A. No: 1981CV01957

MICH KAREN PIERRE LOUIS, Individually and)
on behalf of all others similarly situated,)
)
Plaintiff,)
v.)
)
BAYADA HOME HEALTH CARE, INC., DAVID)
BAIADA and J. MARK BAIADA,)
Defendants.)

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This class action settlement agreement and release (hereinafter, the "Agreement") is entered into this 30th day of December, 2021, by and among Plaintiff, Mich Karen Pierre Louis (hereinafter, "Plaintiff"), individually and on behalf of the members of the proposed settlement class defined herein (hereinafter, the "Settlement Class"), and Defendants, Bayada Home Health Care, Inc. (hereinafter, "BAYADA"), David Baiada, and J. Mark Baiada (collectively, hereinafter, "Defendants") (Defendants with Plaintiff, hereinafter, the "Parties"), in the matter of *Mich Karen Pierre Louis, individually and on behalf of all others similarly situated v. Bayada Home Health Care Inc., David Baiada, and J. Mark Baiada*, Civil Action No. 1981-cv-01957 filed in the Middlesex County Superior Court (hereinafter, the "Action").

1. Purpose.

- a. Pursuant to the terms set forth below, the Parties enter into this Agreement to bring about a full, complete and final resolution of all claims asserted, or that could have been asserted, in the Action against Defendants by Plaintiff and the Settlement Class.
- b. Defendants have denied and continue to deny any liability or wrongdoing of any kind associated with any and all past and present matters, disputes, claims, demands, and causes of action of any kind whatsoever in this Action that were, or could have been, asserted on behalf of Plaintiff and/or the Settlement Class.
- c. Notwithstanding, the Parties engaged in extensive negotiations to resolve the Action, and, based on those negotiations, the Parties agree to settle the Action as it relates to Defendants pursuant to the provisions of this Agreement, which are set forth in detail below.

- d. It is the desire and intention of the Parties that this Agreement shall, for Plaintiff and each member of the Settlement Class, fully, finally, and forever settle, resolve, compromise, release and discharge any and all of the Released Claims (as defined herein) and result in dismissal, with prejudice, of the Action in its entirety. Further, the Parties expressly understand and agree that Defendants are entering into this Agreement solely for the purpose of avoiding the costs and disruption of ongoing litigation and resolving the Released Claims on the terms set forth herein. Nothing in this Agreement may be construed or deemed an admission by Defendants of any liability or wrongdoing.
 - e. Plaintiff and counsel for Plaintiff and the proposed Settlement Class (hereinafter, "Class Counsel") judge the Agreement to provide fair, reasonable, and adequate relief to the Settlement Class and to be in the best interests of the Settlement Class. Defendants agree to join in seeking preliminary and final approval of class settlement under the terms of this Agreement as well as certification of the Settlement Class (as defined below).
2. **The Settlement Class.** This Agreement is entered into on behalf of Plaintiff and all BAYADA employees who provided home care services on BAYADA's behalf in Massachusetts and who had deductions reflected on their paper earnings statements that were not properly itemized on such paper earnings statements from January 1, 2018, through August 2, 2019 (the "Settlement Class").
3. **Settlement Consideration.**
 - a. BAYADA agrees to provide Twenty-Two Thousand Three Hundred Forty-Two Dollars (\$22,342) in settlement funds to the Settlement Class (the "Settlement Fund") to fully and finally resolve the Action. The Settlement Fund reflects 50% of the unidentified deductions at issue on the paper earnings statements for the Settlement Class. BAYADA shall remit payments to the Settlement Class members as set forth in Paragraph 5 ("Delivery") below.
 - b. Defendant also agrees to pay all costs of notice to the Settlement Class and settlement administration, which shall be separate from and in addition to the Settlement Fund.
4. **Effective Date.** The Effective Date of the settlement shall be the date on which the Court has entered an order approving the settlement (the "Final Order"), and the Final Order is no longer appealable (*i.e.*, the deadline for filing an appeal has passed with no appeals having been filed, or the Final Order has been affirmed on appeal, and either (a) the deadline for any further appeals has passed with no appeals having been filed or (b) the appellate order or decision is not subject to any further appeal).

5. **Delivery.** Within ten (10) business days of the Effective Date, BAYADA shall issue, from the Settlement Fund, checks to each member of the Settlement Class. **Exhibit A** identifies the payment that BAYADA shall remit to each Settlement Class member. BAYADA shall re-issue, upon reasonable request, any checks that are lost or damaged during settlement administration. The settlement checks will remain live for a period of one hundred eighty (180) calendar days. Within ten (10) days after the distribution of the Settlement Fund is completed, BAYADA shall provide to Class Counsel (for filing with the Court) a declaration: (1) confirming that the distribution of the Settlement Fund to the members of the Settlement Class was made in accordance with **Exhibit A** to this Agreement; (2) identifying any members of the Settlement Class to whom funds were unable to be distributed; and (3) confirming that any unclaimed funds were distributed to the Massachusetts IOLTA Committee from the Settlement Fund, consistent with the terms of this Agreement.

6. **Tax Forms.** Plaintiff will provide Defendants with a completed IRS Form W-9 at or before the time Plaintiff signs the Agreement.

7. **Class Certification and Settlement Approval.** The Parties shall move jointly for the Settlement Class to be certified by the Court and for this proposed Settlement to be approved.

8. **Full Wage and Hour Release.** As of the Effective Date, Plaintiff and all members of the Settlement Class, on behalf of themselves and their heirs and personal representatives, hereby release and forever discharge the Defendants, their direct and indirect subsidiaries, divisions, parents, affiliates, companies under common control of any of the foregoing, predecessors, successors, and assigns, and its and their past, present and future owners, shareholders, partners, principals, managers, members, directors, officers, employees, agents, attorneys, insurers, employee benefit plans, trustees and all others acting in concert with them (collectively, the "Released Parties"), from any and all claims, actions, suits, proceedings, complaints, causes of action, grievances, debts, costs and expenses, at law or in equity, known or unknown, that were or could have been asserted in the Action, arising out of, based on, or relating in any way to any acts or omissions that occurred, in whole or in part, prior to the Effective Date, including, but not limited to, violations of the Fair Labor Standards Act of 1938, M.G.L., c. 149, § 148, the Massachusetts Wage Act, the Massachusetts Equal Pay Act, and any other federal, state or local statute or regulation, all as amended (herein, the "Released Claims").

9. **Class Action Notice Administration.**

- a. The Parties have selected The Notice Company, Inc. to serve as the Notice Administrator for the purposes of issuing notice of this settlement ("Notice Administrator"). The Parties agree that BAYADA shall bear the cost of settlement administration relative to notice, which includes the Notice Administrator's fees.
- b. The Notice Administrator shall send individual notices to each member of the Settlement Class by email (where available) and first class mail to the last known address. A copy of the Parties' proposed class settlement notice is annexed hereto as **Exhibit B**.

- c. The Notice Administrator shall be responsible for preparing, printing and mailing the notice to all Settlement Class members (the "Settlement Notice"). Within three (3) business days of the Court entering a Preliminary Approval Order, Defendant shall provide to the Notice Administrator the most current email addresses and mailing addresses it has for all Settlement Class members ("Settlement Class Information"). Within ten (10) business days of the receipt of Settlement Class information ("Initial Notice Date"), the Notice Administrator shall send the Settlement Notice to each member of the Settlement Class as provided in Paragraph 9(b) above. In order to provide the best notice practicable, prior to sending the Settlement Notice, the Notice Administrator will run the list of Settlement Class Members through the U.S. Postal Service's National Change of Address database ("NCOA"). Any first-class mail notice returned to the Notice Administrator with a forwarding address shall be re-mailed by the Notice Administrator within three (3) business days following receipt of the returned mail. If any notice is returned to the Notice Administrator without a forwarding address, the Notice Administrator shall undertake reasonable efforts to search for the correct address and shall promptly re-mail the notice to any newly found addresses. This process shall be undertaken by the Notice Administrator even for Settlement Class members who are also receiving notice by email.
- d. The Parties agree that, at no additional cost to Defendants, the Notice Administrator shall post, on a website maintained by the Notice Administrator, the following documents related to settlement in this case: (1) the complaint, (2) the answer, (3) the motion for preliminary approval of the settlement, (4) the settlement notice, and (5) any Court order related to settlement in this case, including any preliminary or final approval orders.

10. Unclaimed Funds. If any unclaimed or residual funds remain two hundred ten (210) days after BAYADA has distributed the Settlement Fund, as provided herein, then BAYADA shall disburse any residual funds to the Massachusetts IOLTA Committee (to support activities and programs that promote access to the civil justice system for low income Massachusetts residents).

11. Class Counsel's Attorneys' Fees and Expenses. Class Counsel may submit an application for an award of attorneys' fees not to exceed the sum of \$50,000 and reimbursement of expenses not to exceed the sum of \$1,100, to be paid by Defendants, separate from and in addition to the Settlement Fund. Defendants will not oppose the fee and expense application, as long as it does not exceed the amounts stated above. BAYADA shall remit such payment to Pastor Law Office LLP by check or wire within five (5) business days of the Effective Date. Class Counsel shall provide BAYADA with an IRS Form W-9 and wire instructions (if applicable) prior to the Effective Date.

12. Plaintiff's Incentive Award. Class Counsel may submit an application for an incentive award to Plaintiff in a sum not to exceed \$3,500, to be paid by Defendants, separate from and in addition to the Settlement Fund. Defendants will not oppose the application for an incentive award, as long as it does not exceed the amount stated above. The Plaintiff's incentive award will be paid by BAYADA via check within five (5) business days of the Effective Date.

13. Objections to the Agreement. The Settlement Notice sent to Settlement Class Members shall inform them of the right to object to this Settlement Agreement. If a person wishes to have the Court consider such an objection, the person must file with the Court and mail to counsel for the Parties a written objection, along with any supporting documentation that the person wishes the Court to consider, no later than fourteen (14) calendar days before the final hearing date. If such objection is submitted and overruled by the Court, the objecting member of the Settlement Class shall remain fully bound by the terms of this Class Settlement so long as it is granted final approval by the Court. Any Settlement Class member who does not appear individually or through counsel and who does not challenge or comment upon the fairness and adequacy of this Settlement Agreement or Class Counsel's petition for attorneys' fees and expenses shall waive and forfeit any and all rights to appear separately or object. All members of the Settlement Class shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in this Action.

14. Notice of Objection. Notice of objections related to this Agreement shall be sent to counsel for all Parties as listed below:

Class Counsel:
David Pastor, Esq.
Pastor Law Office LLP
63 Atlantic Avenue, 3d Floor
Boston, MA 02110
dPastor@PastorLawOffice.com

Counsel for Defendants:
Thomas G. Collins, Esquire
Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101
thomas.collins@bipc.com

15. No Pending Actions. Plaintiff represents to the best of her knowledge that no other complaints, charges, claims, or actions have been filed by her or on her behalf and are currently pending against the Released Parties with any state, federal or local agency or court to date and that Plaintiff will not do so at any time hereafter for actions prior to the Effective Date of this Agreement. Plaintiff further agrees that if any agency or court assumes jurisdiction of any complaint, charge, claim or action against the Released Parties on behalf of Plaintiff, she will direct that agency or court to withdraw from or dismiss with prejudice the matter as it relates to Plaintiff.

16. Preliminary and Final Approval Procedures.

- a. No later than ten (10) business days after the execution of this Agreement, the Parties shall file a joint motion with the Court for an order granting preliminary approval of the settlement, preliminarily certifying the Settlement Class and authorizing the dissemination of the class notice, pursuant to the terms of this Agreement (the "Preliminary Approval Order"). A copy of the Parties' proposed Preliminary Approval Order is annexed hereto as **Exhibit C**. Plaintiff's counsel shall be responsible for preparing and filing the joint motion, subject to review and approval by Defendants' counsel. The Parties agree to take all reasonable steps necessary to promptly secure approval of the settlement from the Court. If the Court does not approve the settlement for any reason, the Parties shall work cooperatively to address the Court's concerns. If the Court still does not approve the settlement, then this Agreement and any related agreements shall be deemed null and void, and the Parties shall be restored to the *status quo ante*, and Defendants expressly reserve the right to assert all arguments and defenses to the claims asserted in the Action and the propriety of class certification, and Plaintiff expressly reserves the right to continue to prosecute all claims asserted in this action and to assert all arguments in support thereof and in support of class certification.
- b. The final approval hearing will be held on such date as the Court, in its discretion, may order.
- c. No later than seven (7) calendar days prior to the final approval hearing, Class Counsel shall file a motion and any supporting papers requesting that the Court grant final approval of the Agreement, as well as a motion or petition for an award of attorneys' fees and expenses.

17. Final Order. The Parties shall use their best efforts to secure the Court's issuance of the Final Order. The Parties' proposed Final Order is annexed hereto as **Exhibit D**. The Final Order shall, among other things:

- a. Find that the Court has personal jurisdiction over the members of the Settlement Class;
- b. Certify the Action as a class action;
- c. Approve this Agreement as fair, adequate, and reasonable;
- d. Direct that the Settlement Fund be distributed in accordance with the terms of this Agreement;
- e. Direct that the Action be dismissed with prejudice and in full and final discharge of any and all Released Claims;
- f. Declare this Agreement to be binding on the Settlement Class and to have *res judicata* effect in all pending and future lawsuits or other proceedings encompassed by the Agreement; and

- g. Retain continuing jurisdiction over this Action for purposes of overseeing all settlement administration matters.
- 18. No Assignment.** Plaintiff hereby represents that she has full and exclusive authority to release and discharge the Released Parties pursuant to the terms of this Agreement and has not hypothecated, mortgaged, assigned, encumbered, transferred, or otherwise disposed of any right, claim, demand, cause of action, or other matter covered by the Release set forth in this Agreement against any Released Party.
- 19. Drafting.** This Agreement was negotiated at arm's length and entered into freely by the Parties with the advice of counsel. In the event an ambiguity exists in any provision of this Agreement, such ambiguity is not to be construed by reference to any doctrine or statute calling for ambiguities to be construed against the drafter of the document.
- 20. Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all agreements or understandings, written or oral, between the Parties hereto pertaining to the subject matter hereof.
- 21. Modifications.** No part or provision of this Agreement may be changed, modified, waived, discharged, or terminated except by an instrument in writing signed by the party against whom enforcement of such change, modification, waiver, discharge or termination is sought. The failure of a party to seek redress for violation or to insist upon strict performance of any provision of this Agreement shall not be a waiver of that provision by that party or estop that party from asserting fully any and all of its rights under this Agreement.
- 22. Voluntary Agreement.** Each of the Parties certifies that it is voluntarily entering into this Agreement in good faith based solely and completely upon its own judgment and upon the advice and counsel of its own attorneys following its good-faith assessment of the claims. All Parties represent that they have read this Agreement and fully understand all of its terms; that they have executed this Agreement without coercion or duress of any kind; and that they understand any rights they may have and sign this Agreement with full knowledge of any such rights.
- 23. Survival.** The Parties hereby agree that the provisions of this Agreement, including, without limitation, the representations, warranties, covenants and releases made herein, shall survive the execution of this Agreement and the performance by the Parties of their respective obligations under this Agreement.
- 24. Severability.** Any part, provision, representation or warranty of this Agreement that is prohibited or unenforceable, or is held by a tribunal of competent jurisdiction to be void or unenforceable, in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining parts, provisions, representations or warranties herein, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties hereby knowingly, voluntarily and intelligently waive any provision of law that prohibits or renders void or unenforceable any part, provision, representation or warranty hereof.

25. Successors and Assigns. This Agreement shall be binding upon and inure to the benefits of the Parties' successors and assigns.

26. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

27. Further Assurances. Each of the Parties hereby agrees to execute such other documents, and to take such other and further actions, as may be reasonably requested by any of the Parties for the sole purpose of effectuating the agreements herein. This includes, but is not limited to, Plaintiff and all others similarly situated .

28. Authority to Execute. Each of the Parties represents and warrants that it is competent and authorized to execute this Agreement, and each of the entities represents and warrants that the individual executing this Agreement on its behalf is duly authorized to do so.

29. Counterparts. This instrument may be executed in two or more counterparts and in multiple originals. The Parties agree that for the purpose of the execution of this Agreement, facsimile, Adobe PDF, and/or DocuSign signatures will constitute original signatures.

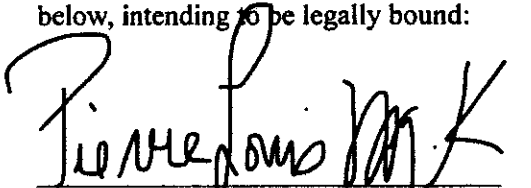
30. No Admissions. By entering into this Agreement, Defendants in no way admit any violation of any law or any liability whatsoever to Plaintiff or the Settlement Class, individually or collectively, all such liability being expressly denied. Moreover, by entering into this Agreement, Defendants in no way admit to the suitability of this case for class action litigation other than for purposes of Settlement. By entering into this Agreement, Plaintiff in no way admits to any lack of merit with respect to the claims asserted. Plaintiff continues to assert the belief that the claims are meritorious and that they are suitable for class certification.

31. Non-Admissible. This Agreement, the settlement, and any proceedings or actions or negotiations in connection therewith are settlement communications covered by Federal Rule of Evidence 408 and shall not be construed as an admission of truth of any allegation or the validity of any cause of action or claim asserted or of any liability therein; nor shall this Agreement, nor the settlement, nor any papers related to them, nor any of the terms hereof be offered or received into evidence or in any way referred to in any proceeding or any other civil, criminal or administrative action other than (a) such proceedings as may be necessary to consummate or enforce this Agreement or to comply with any law or regulation of any federal, state or other government entity, or (b) any action or proceeding by or against Plaintiff, or any Released Party to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim preclusion or issue preclusion or similar defense; nor shall they be construed by anyone for any purpose whatsoever as an admission or presumption of any wrongdoing.

32. **Non-Disclosure.** The Parties agree that until this document becomes public through the Court-approved settlement process described herein, it shall remain confidential and not disclosed by the Parties, except as set forth herein. The Parties further agree that any information, negotiations, data, drafts and/or summaries exchanged between the Parties relating to the negotiation of this Agreement shall remain confidential and shall not be disclosed to the public or to any third party, except as set forth herein.

33. **Governing Law.** Massachusetts law shall govern the interpretation, construction and enforcement of this Agreement.

IN WITNESS WHEREOF, the following have executed this Agreement as of the dates set forth below, intending to be legally bound:


Mich Karen Pierre Louis, individually and
on behalf of others similarly situated

12/30/2021
Date

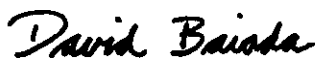
BAYADA Home Health Care, Inc.

By: 
Nori Sue Fey (Jan 18, 2022 3:32 EST)

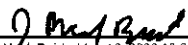
Jan 18, 2022
Date

Nori Sue Fey, Esquire - Director Legal Services

Name: _____ Title: _____


David Baiada

Jan 18, 2022
Date


J. Mark Baiada (Jan 18, 2022 12:35 EST)
J. Mark Baiada

Jan 18, 2022
Date

Exhibit A

Employee Number	Settlement Distribution
100399872	\$96
100378987	\$58
100413957	\$182
105000770	\$5
100399645	\$174
100414403	\$2,338
100389564	\$153
100409157	\$33
105020507	\$32
100320879	\$240
105018706	\$50
100419604	\$56
100409374	\$12
105013943	\$38
105013838	\$56
105020503	\$90
100396589	\$199
100423512	\$299
100379067	\$56
100422210	\$273
105015223	\$28
105000470	\$160
100398907	\$647
105008230	\$103
105013328	\$67
100337054	\$9
105006957	\$82
105011420	\$253
100364563	\$164
100409151	\$4
105008229	\$41
100406203	\$425
100377126	\$149
100234553	\$50
100360093	\$50
100404396	\$950
100402869	\$295
105000906	\$109
100406807	\$3
100415283	\$13
100409898	\$26
105006236	\$85

Employee Number	Settlement Distribution
100407801	\$57
100424606	\$9
100403146	\$261
100400775	\$776
105015400	\$29
100423311	\$66
100366834	\$537
105013431	\$31
100404811	\$197
105004968	\$6
105004047	\$34
100378782	\$34
100361145	\$51
100408607	\$9
100420755	\$44
105014881	\$219
100408088	\$50
105009034	\$150
100423542	\$124
100403121	\$71
105025002	\$32
100380901	\$285
100399643	\$562
100396248	\$215
100402744	\$19
105012370	\$54
100226508	\$20
105007828	\$694
100407230	\$205
100424308	\$74
100416751	\$439
100398321	\$214
100326641	\$187
100398040	\$15
100375974	\$225
100407743	\$18
100395231	\$123
100408425	\$366
100413310	\$132
100365258	\$53
100423517	\$90
100421062	\$25
105019768	\$58

Employee Number	Settlement Distribution
100382825	\$181
100398909	\$104
105010879	\$45
100415349	\$146
100376695	\$45
105007070	\$37
100399591	\$636
105013372	\$859
100397928	\$74
105008248	\$70
100404939	\$274
100407078	\$52
100408990	\$193
100404368	\$479
100423820	\$78
100397571	\$51
100407280	\$6
100211894	\$162
105002052	\$104
100407795	\$380
100390277	\$104
100407071	\$148
105001346	\$246
100407989	\$148
100346717	\$1,199
100405973	\$224
100343359	\$520
100385508	\$442
100389820	\$17
100372018	\$7
105001778	\$53
100404416	\$74
100405427	\$176
Total Amount	\$22,342