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9 Attorneys for Plaintiff, Gertrude Cebrian as an individual and on behalf  
10 of all employees similarly situated

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SAN BERNARDINO

13 GERTRUDE CEBRIAN, as an individual and ) Case No.: CIVDS1312344  
14 on behalf of all employees similarly situated, ) Honorable Richard E.L. Strauss  
15 ) Dept. C-75  
16 Plaintiff, )

17 vs.

18 ROBERT H. BALLARD REHABILITATION )  
19 HOSPITAL, a business form unknown; )  
20 VIBRA HEALTHCARE, a business form )  
21 unknown; VIBRA HOSPITAL OF SAN )  
22 BERNARDINO, LLC, a Delaware limited )  
23 liability company; VIBRA HOLDINGS ONE, )  
24 LLC, a Delaware limited liability company; )  
25 VIBRA MANAGEMENT, LLC, A Delaware )  
26 limited liability company; and DOES 1 )  
27 through 100, inclusive, )

28 Defendant )

NOTICE OF ENTRY OF ORDER TO  
REVISE DEFENDANTS' PAYMENT AND  
INSTALLMENT PLAN FOR CLASS  
ACTION SETTLEMENT

Dept: San Diego Superior Court Dept. C-75

Action Filed: October 17, 2013

Sarabia Action Filed: September 16, 2013

Cebrian Action Filed: October 8, 2013

Sandoval Action Filed: November 30, 2015

Llanos Action Filed: October 5, 2015

NOTICE OF ENTRY OF ORDER TO REVISE DEFENDANTS' PAYMENT AND  
INSTALLMENT PLAN FOR CLASS ACTION SETTLEMENT

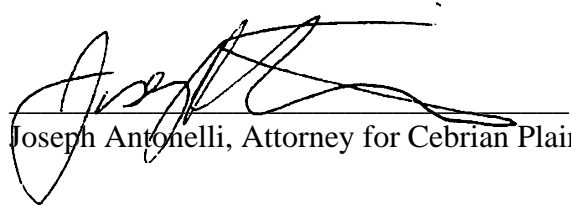
1           **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

2           **PLEASE TAKE NOTICE** that on June 26, 2020 the Honorable Richard E.L. Strauss of  
3 the San Diego Superior Court entered the Order to Revise Defendants' Payment and Installment  
4 Plan for Class Action Settlement regarding the *Cebrian, Llanos* and *Raymond* and the *Sarabia*  
5 Action. A true and correct copy of the Order to Revise Defendants' Payment and Installment  
6 Plan for Class Action Settlement is attached hereto as **Exhibit 1**.

7  
8 Dated: June 29, 2020

LAW OFFICE OF JOSEPH ANTONELLI

9  
10  
11 By:

  
Joseph Antonelli, Attorney for Cebrian Plaintiff

# **EXHIBIT 1**

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FILED  
Clerk of the Superior Court

JUN 26 2020

By: B. DELGADO

5 Attorneys for Plaintiff  
6 GERTRUDE CEBRIAN as an individual and on  
behalf of all employees similarly situated

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13 Attorneys for Defendants  
14 VIBRA HOSPITAL OF SAN BERNARDINO, LLC  
dba ROBERT H. BALLARD REHABILITATION  
15 HOSPITAL *erroneously sued as* ROBERT H.  
BALLARD REHABILITATION HOSPITAL; VIBRA  
16 HEALTHCARE, LLC *erroneously sued as* VIBRA  
HEALTHCARE; VIBRA HOLDINGS ONE, LLC;  
17 and VIBRA MANAGEMENT, LLC

18 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF SAN DIEGO

20  
21 Coordination Proceeding ) Judicial Council Coordination Proceedings No.  
Special Title (Rule 3.550) ) 4874  
22 )  
23 **VIBRA HEALTHCARE WAGE AND** ) [Assigned for all purposes to Richard E.L.  
**HOURLY CASES** ) Strauss, Dept. C-75]  
24 )  
25 ) **~~PROPOSED~~ ORDER TO REVISE**  
26 ) **DEFENDANTS' PAYMENT AND**  
27 ) **INSTALLMENT PLAN FOR CLASS**  
28 ) **ACTION SETTLEMENT**  
)  
)  
) Action Filed: October 17, 2013  
)

**~~PROPOSED~~ ORDER TO REVISE DEFENDANTS' PAYMENT AND INSTALLMENT  
PLAN FOR CLASS ACTION SETTLEMENT**

1 **[PROPOSED] ORDER**

2 Pursuant to the parties' Stipulation of August 30, 2019 and December 10, 2019, as  
3 summarized herein the Court modifies the Order Granting Final Approval of Settlement and the  
4 Judgment both entered on September 7, 2018 and subsequently modified on January 15, 2019  
5 and February 6, 2019.

6 Defendants have continued to experience unforeseen financial difficulties (due to various  
7 financial and cash flow deficiencies), which made the payment of settlement funds (1st  
8 installment) on December 11, 2018 impossible. The Defendant has represented that without a  
9 modification of the Installment Payment Plan that it will not be able to pay the Class any funds  
10 as continuing to operate at a deficit would result in the company no longer operating under risk  
11 of liquidation of all assets and operations;

12 WHEREAS, the parties stipulated to continue the settlement funding date to January 25,  
13 2019, which the Court entered an order upon the stipulation of the parties on January 15, 2019,  
14 however Defendants were unable to fund by this stipulated court ordered date of January 25,  
15 2019;

16 WHEREAS, the parties met and conferred and stipulated to allow a second continuance  
17 of Defendants' funding obligation to April 1, 2019;

18 WHEREAS the Court entered an order upon the stipulation of the parties on February 6,  
19 2019, however Defendants were unable to fund by this second stipulated court ordered date of  
20 April 1, 2019;

21 WHEREAS, the parties met and conferred and provided Defendants' financials to Class  
22 Counsel on or around April 19, 2019;

23 WHEREAS, Plaintiffs and Defendants' principals met and conferred and agreed to a  
24 revised Installment Plan as defined in the Court Approved Stipulation of Class Action Settlement  
25 And Release of Vibra Healthcare Wage And Hour Cases specifically at Paragraph 19 et. seq. as  
26 set forth herein;

27 WHEREAS, Vibra's initial First Installment Payment of \$2,000,000 will be made  
28 pursuant to quarterly payments into the settlement administrator account in the amount of

1 \$250,000 for each quarterly payment beginning within five (5) business days from when the  
2 Court enters this Order, until the full amount of the \$2,000,000 First Installment Payment is  
3 completed;

4 WHEREAS, the settlement First Installment Payment will be paid on the 15<sup>th</sup> of the last  
5 month of every quarter, with the exception of the first \$750,000, as set forth below:

- 6 1. First installment of \$250,000, the Second installment of \$250,000 and the third  
7 installment of \$250,000 for a total of Seven Hundred and Fifty Thousand (\$750,000)  
8 will be paid within five (5) business days from when the Court enters this Order;
- 9 2. Fourth installment of \$250,000 will be paid on September 15, 2020;
- 10 3. Fifth installment of \$250,000 will be paid on December 15, 2020;
- 11 4. Sixth installment of \$250,000 will be paid on March 15, 2021;
- 12 5. Seventh installment of \$250,000 will be paid on June 15, 2021; and
- 13 6. Eighth installment of \$250,000 will be paid on September 15, 2021;

14 WHEREAS, the settlement Second Installment Payment of \$1,837,500 will be paid on  
15 the 15<sup>th</sup> of the last month of every quarter as follows:

- 16 1. First installment of \$250,000 will be paid on December 15, 2021;
- 17 2. Second installment of \$250,000 will be paid on March 15, 2022;
- 18 3. Third installment of \$250,000 will be paid on June 15, 2022;
- 19 4. Fourth installment of \$250,000 will be paid on September 15, 2022;
- 20 5. Fifth installment of \$250,000 will be paid on December 15, 2022;
- 21 6. Sixth installment of \$250,000 will be paid on March 15, 2023;
- 22 7. Seventh installment of \$250,000 will be paid on June 15, 2023; and
- 23 8. Eighth installment of \$87,500 will be paid on September 15, 2023;

24 WHEREAS, the settlement Third Installment Payment of \$1,793,500 will be paid on  
25 the 15<sup>th</sup> of the last month of every quarter as follows:

- 26 9. First installment of \$250,000 will be paid on December 15, 2023;
- 27 10. Second installment of \$250,000 will be paid on March 15, 2024;
- 28 11. Third installment of \$250,000 will be paid on June 15, 2024;

1 12. Fourth installment of \$250,000 will be paid on September 15, 2024;

2 13. Fifth installment of \$250,000 will be paid on December 15, 2024;

3 14. Sixth installment of \$250,000 will be paid on March 15, 2025;

4 15. Seventh installment of \$250,000 will be paid on June 15, 2025; and

5 16. Eighth installment of \$43,500 will be paid on September 15, 2025;

6 If Defendants fail to make any quarterly payment when due, the parties shall meet and  
7 confer as to the reasons for such failure and Plaintiff shall provide twenty-one days of notice of  
8 any intention to enforce the outstanding balance on the judgment;

9 Upon the occurrence of any sale of assets of Defendants for a purchase price in excess of  
10 \$10,000,000 ("Sale Event"), Defendants shall pay to Claims Administrator Trust Account an  
11 amount equal to 10% of the Net Proceeds within seven days of the closing of the Sale Event.  
12 "Net Proceeds" means the proceeds payable to a Defendant in the event of a Sale Event, net of  
13 (i) applicable closing costs, including attorneys' fees and brokerage fees, (ii) any escrow hold  
14 backs, (iii) mandatory payments to secured lenders of Defendants under applicable credit  
15 agreements existing as of the closing date of the Sale Event, and (iv) mandatory payments to  
16 governmental agencies.

17 Defendants will provide audited financial statements and tax returns as requested by  
18 Plaintiffs on a periodic basis during the term of the revised installment plan;

19 The Settlement Administrator will make 3 distributions to the class and the amounts will  
20 include any accrued interest from the interest-bearing account that is selected by the claim's  
21 administrator pursuant to the Joint Stipulation of Settlement. The first distribution will be made  
22 before or on September 30, 2021. The second distribution will be made before or on October 2,  
23 2023. The third distribution will be made before or on September 30, 2025.

24 It is further ordered that the California Constitution grants superior courts inherent  
25 powers that include "fundamental inherent equity, supervisory, and administrative powers, as  
26 well as inherent power to control litigation." (*Slessinger, Inc. v. Walt Disney Co.* (2007) 155  
27 Cal.App.4th 763, 758.)

1 The U.S. Supreme Court has affirmed that courts possess certain inherent powers that  
2 "necessarily result...from the nature of their institution, powers that cannot be dispensed  
3 with...because they are necessary to the exercise of all others." (*United States v. Hudson &*  
4 *Goodwin* (1812) 11 U.S. 32, 34.) These powers are "not confined by or dependent of statute"  
5 (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 267) and include the power to "fashion  
6 procedures and remedies necessary to protect litigants' rights." (*Slessinger, supra*, 155 Cal.  
7 App.4th at p. 762.)

8 California courts have inherent powers "not confined by or dependent on statute." (Cal.  
9 Const. art VI, §1.) The California Supreme Court has recognized two types of inherent powers:  
10 (1) "Courts' equitable power derived from the historic power of equity courts"; and (2)  
11 "supervisory or administrative powers which all courts possess to enable them to carry out  
12 their duties." (*Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272,  
13 287, internal quotations omitted.) The latter powers, in particular, enable a court to "control  
14 litigation before it, to prevent abuse of its process and to create a remedy for a wrong even in  
15 the absence of specific statutory authority." (*Western Steel & Ship Repair, Inc. v. RMI, Inc.*  
16 (1986) 176 Cal.App.3d 1108, 1116.) Once jurisdiction over a matter is conferred upon a trial  
17 court it has all means necessary to carry its jurisdiction into effect. (*Code Civ. Proc.* § 187.)

18 Based on the Court's inherent powers to control the litigation and where there has been a  
19 change in the controlling facts or where the ends of justice would be served by modification or  
20 dissolution of an injunction the court has the inherent power to vacate or modify an injunction  
21 where the circumstances and situation of the parties have so changed as to render such action just  
22 and equitable. This principle governs even though the judgment providing the injunctive relief is  
23 predicated upon stipulation of the parties." *Welsch v. Goswick* (1982) 130 Cal.App.3d 398, 404-  
24 405; *Mendly v. Cty. of L.A.*, (1994)23 Cal. App. 4th 1193, 1206-07.

25 The trial court, has the inherent power to vacate or modify an injunction where there has  
26 been a change in the law or the facts or "where there the ends of justice would be served by  
27 modification." (See *Sontag Chain Stores Co. v. Superior Court* (1941) 18 Cal.2d 92, 95, where  
28 changed circumstances consisted of a subsequent court decision. The Court in the instant case  
has the inherent powers to modify the installment judgment in order to ensure each class member



1 will be paid in full as originally contemplated. Without a modification of the judgment, each  
2 class member risks not recovering any money if the Defendant were to seek protection under the  
3 Bankruptcy laws. The trial court is the proper court in which to seek such modification on the  
4 basis of such changes as have occurred since the date of entry of the judgment.

5 It is further ordered that pursuant to Cal Rules of Court, Rule 3.770 and 3.771 that once  
6 this order is entered that the Class Counsel, Law Office of Joseph Antonelli post a Notice of  
7 Entry of this Order on the website www.Antonellilaw.com. The Internet Notice complies with  
8 Cal Rules of Court, Rule 3.771(f).



9  
10  
11  
12  
13 Dated: JUN 26 2020

**RICHARD E.L. STRAUSS B.D.**  
THE HONORABLE, RICHARD E.L. STRAUSS  
JUDGE OF THE SUPERIOR COURT

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO**

I am employed in the County of San Bernardino, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is 14758 Pipeline Ave., Suite E, 2<sup>nd</sup> Floor, Chino Hills, CA 91709.

On June 29, 2020, I served the foregoing document described as:

**NOTICE OF ENTRY OF ORDER TO REVISE DEFENDANTS' PAYMENT AND  
INSTALLMENT PLAN FOR CLASS ACTION SETTLEMENT**

on INTERESTED PARTIES in this action as stated below:

Adam Siegel, Esq.  
[Adam.Siegel@jacksonlewis.com](mailto:Adam.Siegel@jacksonlewis.com)  
**JACKSON LEWIS P.C.**  
725 S. Figueroa St., Suite 2500  
Los Angeles, CA 90017

Michelle Meek, Esq.  
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**JACKSON LEWIS P.C.**  
225 Broadway, Suite 2000  
San Diego, CA 92101

**XX BY E-MAIL:** I electronically served the above-mentioned documents to each of the recipients at their respective e-mail addresses. My e-address is: [lkirschner@antonellilaw.com](mailto:lkirschner@antonellilaw.com)

**XX BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on that same day with postage thereon fully prepaid at CHINO HILLS, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Nicholas J. Scardigli, Esq. [nscardigli@mayallaw.com](mailto:nscardigli@mayallaw.com)  
Robert J. Wasserman, Esq.; [rwasserman@mayallaw.com](mailto:rwasserman@mayallaw.com)  
John P. Briscoe, Esq.; [jbriscoe@mayallaw.com](mailto:jbriscoe@mayallaw.com)  
**MAYALL HURLEY APC**  
2453 Grand Canal Blvd.  
Stockton, CA 95207

**XX BY E-MAIL:** I electronically served the above-mentioned documents to each of the recipients at their respective e-mail addresses. My e-address is: [lkirschner@antonellilaw.com](mailto:lkirschner@antonellilaw.com)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

*Lisa Kirschner*

\_\_\_\_\_  
Lisa Kirschner

Executed on June 29, 2020, at Chino Hills, California