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behalf of similarly situated employees

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ANNICA B. BOWEN, a.k.a. ANNICA
PALACIO, individually, and on behalf of
similarly situated employees,

Plaintiff,

v.

JEAN SENIOR LIVING HEALTH &
WELFARE BENEFIT PLAN, LLC, a
Washington Limited Liability Company,
WILLOW SPRINGS MANAGEMENT
CA, LLC, a Delaware Limited Liability
Company, Blossom Grove, CA, LLC, a
Delaware Limited Liability Company,
Empire Ranch Alzheimer's Special Care
Center, a business entity form unknown,
and DOES 1 -100, inclusive,

Case No. 2:20-CV-02318-TLN-KJN

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF ALL CLAIMS**

This Class Action and PAGA Settlement Agreement and Release of Claims (“Agreement”) is between (1) Plaintiff Annica B. Bowen, a.k.a. Annica Palacio—individually and on behalf of the Class Members defined below and PAGA Members defined below—and (2) Defendants Willow Springs Management CA, LLC, California HCJ EE Group, LLC, Folsom Investors, L.P. dba Empire Ranch Alzheimer's Special Care Center, and California Senior Living EE Group, LLC (collectively, the “Parties”), subject to judicial approval, as provided below.

By this Agreement the Parties intend to settle the Action (defined below) and to fully, finally, and forever resolve, discharge, and settle the Released Class Claims (defined below) and Released PAGA Claims (defined below), subject to judicial approval of the terms set forth herein. If this Agreement is not finally approved, or is otherwise nullified, then the Parties shall return to their positions in the litigation preceding this Agreement and Defendants shall retain all rights to challenge the Plaintiff’s claims and the certification of any class.

1. DEFINITIONS

For the purposes of this Agreement, the Parties define the following terms. Each defined term appears throughout in initial capital letters.

1.1. “Action” refers to the lawsuit entitled *Bowen v. JEA Senior Living Health & Welfare Benefit Plan LLC, et al.* Eastern District of California, Case No. 2:20-

1 cv-02318-TLN-KJN, pending in the United States District Court for the Eastern District
2 of California. The Action was filed as a class and representative action.

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4 **1.2. “Administrative Costs”** refers to all costs associated with
5 administration of the settlement contemplated by this Agreement. Administrative Costs
6 include all fees and costs for, among other things, printing, copying, formatting, postage,
7 envelopes, computer searches to locate addresses, calculation of payments to Settlement
8 Class Members and PAGA Members, calculation of applicable payroll withholdings and
9 payroll taxes (as applicable), preparation and filing of appropriate IRS Forms, any cost
10 associated with the process for any uncashed settlement checks, and any other expenses
11 the Settlement Administrator incurs to complete the settlement process according to the
12 terms of this Agreement. Administrative Costs are borne in the first instance by the
13 Settlement Administrator.

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15 **1.3. “Agreement”** refers to this Class Action and PAGA Settlement
16 Agreement and Release of All Claims, which includes all its recitals herein and all the
17 attached exhibits.

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19 **1.1. “Blossom Grove Facility”** refers to the Blossom Grove Alzheimer’s
20 Special Care Center located at 11116 New Jersey Street, Redlands, CA 92373.

21
22 **1.2. “Class Counsel”** refers to the Law Offices of Stephen M. Harris,
23 P.C., and Smith & Benowitz. For purposes of providing any notices required under this
24 Agreement, Class Counsel shall refer to: (1) Stephen M. Harris of the Law Offices of
25 Stephen M. Harris, P.C., 6320 Canoga Avenue, Suite 1500, Woodland Hills, CA 91367,
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1 818-924-3103, stephen@smh-legal.com, and (2) Louis Benowitz, Smith & Benowitz,
2 4515 Van Nuys Blvd., Suite 302, Sherman Oaks, CA, 91403, louis@smithbenowitz.com.
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4 **1.3. “Class Counsel Payment”** refers to the amount of attorney’s fees and
5 costs that the Court awards to Class Counsel in connection with the resolution of the
6 Action in accordance with this Agreement.
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8 **1.4. “Class Members”** refers to those individuals who for purposes of
9 this Agreement will be certified as members of the class, defined as follows:
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11 All current or former nonexempt caregivers working at the Willow Springs
12 Facility, the Empire Ranch Facility, and/or the Blossom Grove Facility at
13 any time between April 30, 2016, through September 2, 2021.

14 The Class Members are ascertainable through Defendants’ employment and payroll
15 records.
16

17 **1.5. “Class Period”** means the period from April 30, 2016 through
18 September 2, 2021.
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20 **1.6. “Class Representative”** refers to Plaintiff Annica B. Bowen, a.k.a.
21 Annica Palacio.
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23 **1.7. “Class Representative Service Award”** refers to any payment that
24 the Court awards to the Class Representative for efforts in prosecuting the Action on
25 behalf of the Class Members.
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27 **1.8. “Complaint”** refers to the operative complaint filed in the Action.
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1 **1.9. “Consideration Period”** refers to the 45 calendar days following the
2 date when the Settlement Administrator mails the Notice of Class Action Settlement.

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4 The Consideration Period is the period in which (1) a Class Member can submit an
5 Objection, a Work Week Objection, or a Request for Exclusion and (2) a PAGA Member
6 can submit a Work Week Objection.

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8 **1.10. “Court”** refers to the Judge presiding over this Action.

9 **1.11. “Defendants”** refer to Willow Springs Management CA, LLC,
10 California HCJ EE Group, LLC, Folsom Investors, L.P. dba Empire Ranch Alzheimer's
11 Special Care Center, and California Senior Living EE Group, LLC. Currently, JEA
12 Senior Living Health & Welfare Benefit Plan LLC and Blossom Grove CA, LLC are
13 named as defendants in the lawsuit. Plaintiff will file an amended complaint, once this
14 Agreement has been executed, deleting JEA Senior Living Health & Welfare Benefit
15 Plan LLC and Blossom Grove CA, LLC, because they did not employ class
16 members/aggrieved employees, and adding California HCJ EE Group, LLC and
17 California Senior Living EE Group, LLC, which were employers of class members
18 and/or aggrieved employees for at least part of the class period. Once this Agreement is
19 executed, Plaintiff will present a stipulation to defense counsel permitting the filing of the
20 amended complaint, and a proposed amended complaint, and Plaintiff will file the
21 amended complaint once the stipulation is fully executed, contemporaneously with
22 Plaintiff's preliminary approval motion.
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1 **1.12. “Defense Counsel”** refers to Stoel Rives LLP, Bryan L. Hawkins,
2 bryan.hawkins@stoel.com, Bao M. Vu, bao.vu@stoel.com, 500 Capitol Mall, Suite 1600,
3 Sacramento, CA 95814, 916.447.0700. For purposes of providing any notices required
4 under this Agreement, Defense Counsel shall refer to Bryan L. Hawkins, Stoel Rives
5 LLP, 500 Capitol Mall, Suite 1600, Sacramento, CA 95814, 916.447.0700.
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7 **1.13. “Effective Date”** refers to the date of final approval if no objections
8 are filed to the Settlement. If objections are filed and overruled, and no appeal is taken of
9 the final approval order, then the Effective Date shall be forty-five (45) days after the
10 Court enters final approval. If an appeal is taken from the Court’s overruling of
11 objections to the settlement, then the Effective Date shall be twenty (20) days after the
12 appeal is withdrawn or after an appellate decision affirming the final approval decision
13 becomes final. No money will be distributed unless and until the Effective Date occurs.
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15 **1.14. “Eligible Workweek”** refers to a workweek in which a Class
16 Member and/or PAGA Member worked during the Class Period and/or PAGA Period.
17 The Parties estimate that Class Members worked approximately 8,516 total workweeks
18 during the Class Period.
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20 **1.15. “Empire Ranch Facility”** refers to the Empire Ranch Alzheimer’s
21 Care Special Center located at 1801 E. Natoma Street, Folsom, CA 95630.
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23 **1.16. “Employee Information Sheet”** refers to and means the information
24 conveyed to Class Members about their payment, including work-weeks, and their
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1 individual payment as well as instructions on how to dispute work-weeks attributable to
2 them.

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4 **1.17. “Fairness Hearing”** refers to the hearing at which the Court decides
5 whether the terms of the Agreement are fair, reasonable, and adequate for the Class
6 Members and PAGA Members and meet all requirements for final approval.

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8 **1.18. “Final Approval Order”** refers to the final order by the Court
9 approving the Settlement following the Fairness Hearing.

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11 **1.19. “Gross Settlement Amount”** refers to the payment Defendants are
12 obligated to make in connection with the Agreement: One Hundred Twenty-Five
13 Thousand Dollars And No Cents (\$125,000.00). In no event shall Defendants be
14 obligated to pay more than this amount and no part of the Gross Settlement Amount will
15 revert to Defendants. This sum includes all Individual Settlement Payments, any Class
16 Representative Service Award, the PAGA Payment, Administrative Costs, and the Class
17 Counsel Payment.

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20 **1.20. “Individual Settlement Payment”** refers to the amount calculated by
21 the Settlement Administrator to distribute to each Settlement Class Member. The
22 Individual Settlement Payment shall be paid from the Net Settlement Amount. To the
23 extent any Settlement Class Member is entitled to receive a portion of the PAGA
24 Payment in addition to his or her Individual Settlement Payment, such amounts shall be
25 included with the Individual Settlement Payment.
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1 **1.21. “Judgment”** refers to the final judgment entered by the Court in this
2 Action following the Fairness Hearing.

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4 **1.22. “LWDA”** refers to the California Labor & Workforce Development
5 Agency, which helps to enforce the Private Attorney General Act (“PAGA”), and which
6 will receive the LWDA portion of the PAGA Payment.

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8 **1.23. “Net Settlement Amount”** refers to the portion of the Gross
9 Settlement Amount that remains after accounting for any Class Representative Service
10 Award, the PAGA Payment, Administrative Costs, and the Class Counsel Payment. The
11 Net Settlement Amount shall include all Individual Settlement Payments, with the
12 settlement funds paid to the Settlement Class to be treated as interest and penalties
13 reportable on IRS form 1099. The Class Members and PAGA Members are responsible
14 for taxes and accounting on their payments received.

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17 **1.24. “Notice of Class Action Settlement”** refers to the Notice of Class
18 Action and PAGA Settlement, substantially in the form attached as Exhibit A.

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20 **1.25. “Objection”** refers to a Class Member’s valid and timely written
21 objection to the Settlement. For an Objection to be valid, it must contain: (1) the name
22 and case number of this Action (or reasonable portion thereof); (2) the full name, last four
23 digits of their Social Security number, and current address of the Class Member making
24 the Objection; (3) the specific reason(s) for the Objection; and (4) all evidence and
25 supporting papers (including, without limitation, all briefs, written evidence, and
26 declarations) for the Court to consider.
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1 **1.26. “Objector”** refers to a Settlement Class Member who has submitted
2 an Objection.

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4 **1.27. “PAGA Members”** refers to all current or former nonexempt
5 caregivers working at the Willow Springs Facility, the Empire Ranch Facility, and/or the
6 Blossom Grove Facility at any time between April 30, 2019, through September 2, 2021.

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8 **1.28. “PAGA Payment”** refers to a payment of Five Thousand Dollars
9 (\$5,000.00) in settlement of a claim for civil penalties under the Private Attorneys
10 General Act of 2004. 75% of the PAGA Payment shall be payable to the LWDA. The
11 remaining 25% shall be distributed to PAGA Members and included with the PAGA
12 Member’s Individual Settlement Payment.

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14 **1.29. “PAGA Period”** refers to the period from April 30, 2019, through
15 September 2, 2021.

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17 **1.30. “Plaintiff”** refers to Class Representative Annica B. Bowen, a.k.a.
18 Annica Palacio—individually and on behalf of the Class Members.

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20 **1.31. “Preliminary Approval Order”** refers to the order entered by the
21 Court following a Motion for Preliminary Approval of the Agreement.

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23 **1.32. “Qualified Settlement Fund (QSF)”** refers to a Qualified Settlement
24 Fund pursuant to U.S. Treasury Regulation Section 468B-1.

25 **1.33. “Released Class Claims”** refers to all claims that will be
26 extinguished by operation of this Agreement and the events it provides for. The Released
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1 Class Claims shall apply to all Class Members who do not timely file a Request for
2 Exclusion.

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4 **1.34. “Released PAGA Claims”** refers to all claims that will be
5 extinguished by operation of this Agreement and the events it provides for. The Released
6 PAGA Claims shall apply to all PAGA Members. PAGA Members cannot opt out of the
7 PAGA portion of this Settlement
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9 **1.35. “Released Parties”** refers to Willow Springs Management CA, LLC,
10 California HCJ EE Group, LLC, California Senior Living EE Group, LLC, and Folsom
11 Investors, L.P. dba Empire Ranch Alzheimer's Special Care Center and each and all of
12 their current or former subsidiaries, parents, affiliates, predecessors, insurers, agents,
13 employees, successors, assigns, officers, officials, directors, attorneys, personal
14 representatives, executors, and shareholders, including their respective pension, profit
15 sharing, savings, health, and other employee benefits plans of any nature, the successors
16 of such plans, and those plans’ respective current or former trustees and administrators,
17 agents, employees, and fiduciaries. For purposes of clarity, the Released Parties include,
18 Jerry Erwin Associates Inc.. and/or Jerry Erwin Associates LLC (doing business as JEA
19 Senior Living).
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24 **1.36. “Request for Exclusion”** refers to a timely, written, opt-out request
25 signed by a Class Member who thereby elects to be excluded from this Agreement. For a
26 Request for Exclusion to be valid, it must contain: (1) the Class Member’s first and last
27 name; (2) signature; (3) address; (4) telephone number; (5) and last four digits of the
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1 Class Member's Social Security number. Any Request for Exclusion shall also state: "I
2 WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE BOWEN
3 LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
4 SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE
5 SETTLEMENT OF THIS LAWSUIT." Any Request for Exclusion shall not be effective
6 to exclude a PAGA Members from either receipt of his or her portion of the PAGA
7 Payment or a release of the Released PAGA Claims.
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11 **1.37. "Settlement"** refers to the disposition of the Action pursuant to this
12 Agreement.
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14 **1.38. "Settlement Administrator"** refers to the third-party administrator
15 mutually agreed to by the parties, which is Simpluris.
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17 **1.39. "Settlement Class"** refers to all Class Members who do not file a
18 timely and valid Request for Exclusion.
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20 **1.40. "Settlement Class Member"** refers to members of the Settlement
21 Class.
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23 **1.41. "Willow Springs Facility"** refers to the Willow Springs Alzheimer's
24 Special Care Center located at 191 Churn Creek Road, Redding, California 96003.
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26 **1.42. "Work Week Objection"** refers to a dispute by a Class Member
27 and/or a PAGA Member regarding the number of work weeks they worked during the
28 Class Period and/or PAGA Period, timely raised by an objection.

2. RECITALS AND PROCEDURAL HISTORY

2.1. Allegations in Complaint. On or about January 29, 2020, Plaintiff filed a written notice with the LWDA notifying the LWDA of alleged violations of the California Labor Code by Defendants and related entities. This letter was sent pursuant to California Labor Code sections 2699, *et seq.* The LWDA did not respond to the notice within the time provided by California Labor Code section 2699.3. On April 30, 2020, Plaintiff filed a complaint in this Action in the Superior Court of the State of California for the County of Los Angeles, individually and on behalf of a class of similarly situated employees. Plaintiff asserted claims for: (1) Failure to provide meal breaks (Cal. Lab. Code §§ 226.7 and 512); (2) failure to provide rest periods (Cal. Lab. Code §§ 226.7 and 512); (3) waiting time penalties (Cal. Lab. Code §§ 200-203); (4) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (5) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and (6) penalties under the Private Attorneys' General Act ("PAGA") (Cal. Lab. Code §§ 2698, *et seq.*). Thereafter, the action was removed to the United States District Court for the Central District of California, and then transferred to the United States District Court for the Eastern District of California.

2.2. Defendants' Denials. Defendants deny: (1) all the material allegations in this Action; (2) that they violated any applicable laws; (3) that they are liable for damages, penalties, interest, restitution, attorneys' fees, or costs, or for any other compensation or remedy with respect to anyone on account of the claims asserted in the Action; and (4) that class certification, or representative treatment is appropriate as to

any claim in the Action. Defendants contend that their policies, procedures, and practices comply with all applicable laws asserted in the Action. And Defendants contend that they no longer operate the entities which Plaintiff has sued. Nonetheless, without admitting any liability or wrongdoing whatsoever and without admitting that class certification, or representative treatment is appropriate for any purpose other than for settlement purposes alone, Defendants have agreed to settle the Action on the terms set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation. Any statements by Defendants in this Agreement are made for settlement purposes only. Neither this settlement agreement, nor any proceedings related to it, will constitute an admission on behalf of Defendants of any form of liability or the accuracy of any fact or allegation against them. Defendants specifically deny any and all liability.

2.3. Class Counsel's Investigation. Class Counsel represent that they have conducted a sufficiently thorough investigation into the claims of the Class Members. Based on their own independent investigation and evaluation and all known facts and circumstances, including the risk of significant defenses asserted by Defendants, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Class Members.

2.4. Negotiation of Settlement. Class Counsel engaged in intensive, arms-length negotiations with Defendants at mediation with experienced mediator David S. Phillips, Esq., with a view toward achieving substantial benefits for the Class Members, while avoiding the cost, delay, and uncertainty of further litigation. Plaintiff

1 and Class Counsel urge approval by the Court of this Agreement after considering: (1)
2 the factual and legal defenses to the claims asserted, which render uncertain the ultimate
3 outcome of the Action and class certification; (2) the potential difficulties Plaintiff and
4 Class Members would encounter in establishing their claims and maintaining class or
5 representative action treatment; (3) the substantial benefits that Class Members would
6 receive under this Agreement; (4) that this Agreement provides Class Members relief in
7 an expeditious and efficient manner, compared to any manner of recovery possible after
8 litigation and potential appeal; and (5) that this Agreement allows Class Members to opt
9 out of the Action and individually pursue the claims alleged in the Action.
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13 **2.5. Certification of Settlement Class.** This Agreement is contingent
14 upon the Court's certification of the Settlement Class under Federal Rules of Civil
15 Procedure Rule 23, for settlement purposes only. Defendants do not waive, and instead
16 expressly reserve, the right to challenge the propriety of class certification, or
17 representative treatment for any other purpose should the Court not approve the
18 Agreement.
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21 **Now therefore,** in consideration of the agreements set forth herein, and of the
22 release of all Released Claims, the Parties agree to the terms of this Agreement, subject to
23 the approval of the Court.
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3. NOTICE TO CLASS MEMBERS

3.1. Content of Notice of Class Action Settlement. The Notice of Class Action Settlement shall be substantially in the form attached as Exhibit A and include the amount of the Settlement, a calculation of the Class Member's anticipated share of the Net Settlement Amount, including any portion of the payment which represents a PAGA Payment to a PAGA Member, and the full amounts of the Class Counsel Payment, the PAGA Payment to the LWDA, the Class Representative Service Award, Administrative Costs to be awarded, the terms of the release, the procedure to opt out of the Settlement through a Request for Exclusion, the procedure to submit an Objection to the Settlement, the procedure to submit a Work Week Objection, and the date of the Fairness Hearing. No claim form will be required to participate in the settlement.

3.2. Settlement Administrator. The parties have selected Simpluris as Settlement Administrator. The duties of the Settlement Administrator shall include, without limitation, mailing notices to Class Members, establishing a QSF, obtaining appropriate tax identification number(s), calculating Individual Settlement Payments, calculating the portion of the PAGA Payment owed to the Settlement Class Members who are also PAGA Members, mailing Individual Settlement Payments to Settlement Class Members, including the portion of the PAGA Payment owed to any Settlement Class Members, requisite reporting documentation to taxing authorities, and the other duties associated with settlement administration, including those specified in this

1 Agreement. Any dispute relating to the settlement administration will, after good-faith
2 efforts by the Parties to resolve the dispute, be referred to the Court.

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4 **3.3. Class Data for the Settlement Administrator.** Within 10 business
5 days of the later of preliminary approval of this Settlement or court approval of the
6 settlement notice to the Class, Defendants shall provide to the Settlement Administrator a
7 confidential class list containing the names, employee ID numbers, last known address
8 and telephone number(s), dates of active employment, and numbers of Eligible
9 Workweeks worked during the Class Period and PAGA Period in a position subject to
10 this Agreement, and Social Security numbers to facilitate the administration of this
11 Agreement. The Settlement Administrator shall keep the class data provided by
12 Defendants strictly confidential and shall use the class data only for the purposes
13 described in this Agreement and shall return the class data to Defendants or confirm the
14 destruction of same upon completing the settlement administration called for by this
15 Agreement. To the extent Defendants are unable to provide exact figures regarding the
16 numbers of Eligible Workweeks during the Class Period and/or PAGA Period, the Parties
17 will work together in good faith to obtain reasonable estimates of such numbers.
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22 **3.4. Mailing Materials to Class Members.** Within 30 calendar days of
23 the later of preliminary approval of this Settlement or court approval of the settlement
24 notice to the Class, the Settlement Administrator shall send the Notice of Class Action
25 Settlement to Class Members at their last known address via First Class U.S. Mail. Any
26 mailing returned to the Settlement Administrator as undeliverable shall be sent within
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1 five calendar days via First Class U.S. Mail to any available forwarding address. If no
2 forwarding address is available, then the Settlement Administrator shall attempt to
3 determine the correct address by using a computer-based skip-trace search, and shall then
4 perform, if feasible, a re-mailing via First Class U.S. Mail within ten (10) calendar days
5 of receiving notice that a settlement notice was undelivered. If the last known address is
6 not available for a Class Member, then the Notice of Class Action Settlement for that
7 Class Member will be deemed undeliverable. Only one re-mailing is required. If a Class
8 Member cannot be located within two attempts at mailing, then the Notice of Class
9 Action Settlement for that Class Member will be deemed undeliverable. It is the intent of
10 the Parties that reasonable means be used to locate Class Members.

11
12 **3.5. Proof of Mailing.** At least thirty (30) calendar days prior to the
13 Fairness Hearing, the Settlement Administrator shall provide a declaration of due
14 diligence and proof of mailing with regard to mailing of the Notice of Class Action
15 Settlement to Class Counsel and Defense Counsel, which they shall in turn provide to the
16 Court.

17 **4. CLASS MEMBERS' OPTIONS TO RESPOND**

18 **4.1. Consideration Period.**

19 **4.1.1. Submission of Objections, Objections to Work Weeks, and**
20 **Requests for Exclusion.** Class Members will have forty-five (45) calendar days from
21 the later of the date of the mailing or re-mailing of the Notices to postmark their
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1 Objections, Work Week Objections, or Requests for Exclusion to the Settlement
2 Administrator. Except as specifically provided herein, no Class Member response of any
3 kind that is postmarked after the Consideration Period shall be considered absent
4 agreement of the Parties.
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6 **4.2. Requests for Exclusion and Opt Out Rights.** Class Members shall
7
8 be given the opportunity to opt out of the Settlement.

9 **4.2.1. Opt Out Procedure.** Class Members may opt out of this
10 Agreement by mailing the Settlement Administrator a Request for Exclusion.
11 Specifically, the request shall state: "I WISH TO BE EXCLUDED FROM THE
12 SETTLEMENT CLASS IN THE BOWEN LAWSUIT. I UNDERSTAND THAT IF I
13 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
14 RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT." A
15 Request for Exclusion, to be valid, must include the Class Member's name, current
16 address, current telephone number, and the last four digits of the Class Member's Social
17 Security number. A Class Member who excludes himself or herself from the settlement
18 shall lose standing to object. Any Request for Exclusion that does not include all of the
19 required information or that is not submitted in a timely manner will be deemed
20 ineffective. If there is a dispute regarding the timeliness or validity of a Request for
21 Exclusion, then the Settlement Administrator shall make the determination, after
22 consultation with Class Counsel and Defense Counsel. The Request for Exclusion shall
23 not be effective as to the release of the Released PAGA Claims. PAGA Members cannot
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1 opt out of the PAGA portion of this Settlement. If a Class Member opts out of the
2 Settlement, then they will only be entitled to their PAGA portion of the Settlement, if
3 any, and the remainder of the payment due to the Class Member shall be treated as if the
4 Class Member did not cash his or her Settlement payment check

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6 **4.2.2. Effect of Exclusion Through Opting Out.** Any Class
7 Member who opts out of this Agreement may not submit an Objection and shall not
8 receive any Individual Settlement Payment and shall not be bound by the Released Class
9 Claims set forth in this Agreement. If a Class Member submits both a Request for
10 Exclusion and an Objection, then the Request for Exclusion will be valid and will
11 invalidate the Objection. Each Class Member who does not submit a timely, valid
12 Request for Exclusion shall be bound by the releases for which this Agreement provides.

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14 **4.2.3. Deficiency Notices.** Within ten (10) days after receipt by the
15 Settlement Administrator of each timely-submitted Request for
16 Exclusion, the Settlement Administrator will send a deficiency notice
17 to the Class Members addressing any irregularities in the Request for
18 Exclusion (such as failure to sign or include last four digits of Social
19 Security Number). The deficiency notice will provide the Class
20 Members fourteen (14) days from the mailing of the deficiency notice
21 to postmark a written response to cure all deficiencies. The failure of
22 a Class Member to cure all deficiencies in a timely manner shall
23 invalidate a Request for Exclusion and will not be subject to cure.

1 **4.3. Objections.** Class Members who do not submit a Request for
2 Exclusion shall be entitled to object to the terms of the Agreement.
3

4 **4.3.1. Objection Procedures.** Any objection to this Agreement must
5 contain: (1) the name and case number of this Action (or reasonable portion thereof);
6 (2) the full name, last four digits of their social security number, and current address of
7 the Class Member making the Objection; (3) the specific reason(s) for the Objection; and
8 (4) all evidence and supporting papers (including, without limitation, all briefs, written
9 evidence, and declarations) for the Court to consider. Class Members who submit an
10 Objection remain bound by this Agreement if it is approved by the Court. The Settlement
11 Administrator and/or Class Counsel shall file any and all Objections with the Court.
12 Moreover, Class Members who wish to object to the number of Eligible Workweeks
13 attributable to them in the Class Notice, shall state: (1) the name and case number of this
14 Action (or reasonable portion thereof); (2) the full name, last four digits of their social
15 security number, and current address of the Class Member making the Objection; (3) the
16 work-weeks the Class Member claims to have worked; and (4) the evidence supporting
17 said objection. The Settlement Administrator, in consultation with Class Counsel, shall
18 determine if any such objection is valid, and shall provide notice to the Class Member of
19 any deficiencies if he or she fails to provide sufficient information in support of the Work
20 Week Objection, that is, a notice of the information needed to adequately consider the
21 objection to the work-week objection.
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1 **4.3.2. Waiver of Objection Rights.** Class Members who fail to
2 submit an Objection in the manner specified in the Notice of Class Action Settlement
3 shall be deemed to have waived any objection (to the Settlement or the number of
4 Eligible Workweeks attributed to them) and shall be foreclosed from objecting to this
5 Agreement, whether by appeal or otherwise.
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8 **4.4. Proof of Class Members' Responses.** At least thirty (30) calendar
9 days prior to the Fairness Hearing, the Settlement Administrator will prepare a
10 declaration to submit to the Court regarding the mailing of the Notice of Class Action
11 Settlement, the inability to deliver any mailing due to invalid addresses, the number of
12 any Requests for Exclusion, and the number of any Objections and the contents of the
13 Objections.
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16 **4.5. Binding Effect of Settlement.** Although a Class Member might not
17 receive the Notice of Class Action Settlement and might not timely submit an Objection
18 or a Request for Exclusion because of inability to locate the Class Member's current
19 address, that Class Member shall nonetheless be bound by this Agreement.
20

21 **4.6. No Interference with Class Member Responses.** Each Party agrees
22 not to encourage any Class Member to submit an Objection or a Request for Exclusion
23 and agrees not to retaliate against any Class Member for participating or not participating
24 in the settlement that this Agreement contemplates.
25

26 **5. DISTRIBUTION OF SETTLEMENT PROCEEDS**

27
28

1 **5.1. Administrative Costs.** The Parties agree to obtain a reasonable
2 estimate of Administrative Costs of up to \$9,000.00 and seek approval of Administrative
3 Costs to be drawn from the Gross Settlement Amount. If the Court approves only a
4 lesser amount, then the other terms of this Agreement shall still remain in effect. The
5 amount of Administrative Costs is not a material term of this Agreement. If this
6 Agreement is not finally effectuated, then any Administrative Costs incurred to date will
7 be paid in equal parts by Defendants and Plaintiff.
8

9 **5.2. Class Counsel Payment.** Class Counsel intend to request—and
10 Defendants agree not to oppose—that the Court award a Class Counsel Payment, to be
11 drawn from the Gross Settlement Amount, for attorneys’ fees of \$41,666.00 and costs of
12 up to \$12,500.00. Defendants shall have no liability for any other attorneys’ fees or costs.
13 To the extent that the Court approves less than the amount of Class Counsel Payment that
14 Class Counsel request, the difference between the requested and awarded amounts will be
15 distributed to Settlement Class Members on a proportional basis relative to the size of
16 their claims as set forth in Section 5.5.1, below.
17

18 **5.2.1. Approval of Class Counsel Payment Not Material.** The
19 Court’s approval of the Class Counsel Payment in the amount requested is not a material
20 term of this Agreement. If the Court approves only a lesser amount, then the other terms
21 of this Agreement shall still remain in effect and the difference will remain part of the
22 Net Settlement Amount.
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5.2.2. Timing of Class Counsel Payment. The Settlement

Administrator shall issue the Class Counsel Payment within thirty (30) days after the Effective Date. Within ten (10) business days after the Effective Date, Class Counsel shall transmit instructions to the Settlement Administrator as to how any approved attorneys' fees and costs shall be paid. The Settlement Administrator shall issue an appropriate Internal Revenue Service Form 1099 to Class Counsel. Class Counsel shall be solely responsible for paying all applicable taxes on any Class Counsel payment and shall indemnify and hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel payment.

5.3. Class Representative Service Award. Class Counsel intends to

request—and Defendants agree not to oppose—that the Court award a Class Representative Service Award to the Class Representative in an amount of Three Thousand Dollars (\$3,000.00), to be drawn from the Gross Settlement Amount. Any Class Representative Service Award would be in addition to the Class Representative's Individual Settlement Payment. To the extent that the Court approves less than the amount of Class Representative Service Award that Class Counsel requests, the difference between the requested and awarded amount will be distributed to Settlement Class Members on a proportional basis relative to the size of their claims as set forth in Section 5.5.1, below.

5.3.1. Class Representative Service Awards Not Material. The

Court's approval of Class Representative Service Awards is not a material term of this

1 Agreement. If the Court does not approve or approves only a lesser amount than that
2 requested for a Class Representative Service Award, then the other terms of this
3 Agreement shall still remain in effect.
4

5 **5.3.2. Timing of Class Representative Service Award.** The
6 Settlement Administrator shall pay any Class Representative Service Award within thirty
7 (30) days after the Effective Date, and shall issue an IRS Form 1099 to the Class
8 Representative. The Class Representative shall be solely responsible for paying all
9 applicable taxes on any Class Representative Service Award and shall indemnify and
10 hold harmless Defendants from any claim or liability for taxes, penalties, or interest
11 arising as a result of the Class Representative Service Award.
12
13

14 **5.4. PAGA Payment.** The Parties will seek approval for a Five Thousand
15 Dollars And No Cents (\$5,000.00) PAGA Payment. The PAGA Payment shall be drawn
16 from the Gross Settlement Amount. 75% of the PAGA Payment will be paid to the
17 LWDA, and 25% will be paid to PAGA Members for their work during the PAGA
18 Period.
19
20

21 **5.4.1. Amount of PAGA Payment Not Material.** Any change in the
22 requested PAGA Payment is not a material term of this Agreement. If the Court
23 approves a lesser or greater amount than that requested, the other terms of this Agreement
24 shall still remain in effect. However, some approval of a PAGA Payment is a material
25 term of the Settlement and this Agreement.
26
27
28

1 **5.4.2. Timing of PAGA Payment.** The Settlement Administrator
2 shall pay 75 percent of any approved PAGA Payment to the LWDA within thirty (30)
3 days after the Effective Date.
4

5 **5.5. Individual Settlement Payments.** Each Settlement Class Member
6 shall be entitled to an Individual Settlement Payment consisting of a share of the Net
7 Settlement Amount, in accordance with the formula set forth below.
8

9 **5.5.1. Calculation of Amount.** Each Settlement Class Member will
10 be eligible to receive a portion of the Net Settlement Amount based on the following
11 formula:
12

13 The Individual Settlement Payment to a Settlement Class Member will be
14 calculated by dividing the number of Eligible Workweeks attributed to the
15 Settlement Class Member worked during the Class Period by all Eligible
16 Workweeks during the Class Period attributed to members of the Settlement
17 Class, multiplied by the Net Settlement Amount. Otherwise stated, the
18 formula for a Class Member is: (individual's Eligible Workweeks ÷ total
19 Settlement Class Eligible Workweeks) x Net Settlement Amount.
20
21
22

23 Defendants' records regarding the number of Eligible Workweeks worked for each
24 Class Member shall be used for purposes of calculating Individual Settlement Payments.
25 The Notice of Class Action Settlement will include an Employee Information Sheet for
26 each Class Member showing how much the individual Settlement Class Member is
27
28

1 expected to receive based on this formula and their number of Eligible Workweeks. The
2 Employee Information Sheet in the Notice of Class Action Settlement will also provide
3 the Settlement Class Members an opportunity to dispute the number of Eligible
4 Workweeks indicated on the Employee Information Sheet. Such dispute must be made
5 no later than forty-five (45) calendar days from the later of the date of the mailing or re-
6 mailing of the Notice of Class Action Settlement. Defendants and/or the Settlement
7 Administrator shall review any documentation provided by the Settlement Class Member
8 to determine whether there was an error in the number of Eligible Workweeks calculated
9 and adjust any payment to be allocated if necessary.

10
11 To the extent the total value of all claims is less than 100% of the Net Settlement
12 Amount (i.e., to the extent that some Class Members do not cash their checks), the
13 unclaimed portion will be allocated to pay Settlement Class Members on a proportional
14 basis relative to the size of their claims, or payments due to them. No taxes shall be taken
15 out of any payment to Settlement Class Members, who shall be responsible for paying
16 any such taxes, and the Settlement Administrator shall transmit a 1099 to each Settlement
17 Class Member along with their payment.

22 **5.5.2. Timing of Individual Settlement Payments to Class**

23
24 **Members.** The Settlement Administrator shall issue Individual Settlement Payments no
25 later than thirty (30) days after the Effective Date. Any checks from the first distribution
26 that are not cashed within one hundred eighty (180) calendar days from the date of the
27 mailing of the checks shall be cancelled and said cancellation shall not affect the validity
28

1 of the release of claims provided for herein and the Settlement Class Member shall be
2 deemed to, nevertheless, be bound by the release of claims provided herein.
3

4 In the event the amount to be distributed is less than \$5,000, the unclaimed portion
5 will be allocated to the California State Controller's Office Unclaimed Property Program
6 with the identity of the recipient of the first distribution check to whom the funds
7 belongs.
8

9 In the event the amount to be distributed is more than \$5,000, not later than two
10 hundred (200) calendar days from the date of mailing of the checks the unclaimed portion
11 will be allocated to Settlement Class Members who cashed the first check on a
12 proportional basis relative of the size of their claims. Any checks from the second
13 distribution that are not cashed within one hundred eighty (180) calendar days from the
14 date of the mailing of the second distribution of checks shall be canceled or voided and
15 the Administrator shall pay over the amount represented by the checks, including any
16 otherwise unpaid interest accumulated in the QSF, to the California State Controller's
17 Office Unclaimed Property Program, with the identity of the recipient of the second
18 distribution check to whom the funds belongs.
19
20
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23 **5.5.3. Tax Allocation of Individual Settlement Payment to Class**

24 **Members.** Each Individual Settlement Payment will be allocated as interest and
25 penalties. The Settlement Administrator shall issue any necessary 1099 statements to
26 Settlement Class Members for their respective Individual Settlement Payments.
27 Settlement Class Members shall be solely responsible for paying all other applicable
28

1 taxes on their respective Individual Settlement Payments and shall indemnify and hold
2 harmless Defendants and the Released Parties from any claim or liability for taxes,
3 penalties, or interest arising as a result of Individual Settlement Payments.
4

5 **5.5.4. Tax Allocations of Individual Settlement Payments Not**

6 **Material.** The Court's approval of the allocation of Individual Settlement Payments set
7 forth above is not a material term of this Agreement. If the Court does not approve or
8 approves a different tax allocation of the Individual Settlement Payments, then the other
9 terms of this Agreement shall still remain in effect.
10
11

12 **5.6. PAGA Payments to PAGA Members.** Each PAGA Member shall
13 be entitled to a portion of the employee portion of the PAGA Payment (\$1,250), in
14 accordance with the formula set forth below.
15

16 **5.6.1. Calculation of Amount.** Each PAGA Member will be eligible
17 to receive a portion of the employee portion of the PAGA Payment based on the
18 following formula:
19

20 The employee portion of the PAGA Payment to a PAGA Member will be
21 calculated by dividing the number of Eligible Workweeks attributed to the
22 PAGA Member worked during the PAGA Period by all Eligible Workweeks
23 during the PAGA Period attributed to the PAGA Members, multiplied by the
24 employee portion of the PAGA Payment. Otherwise stated, the formula for
25 a PAGA Member is: (individual's Eligible Workweeks during the PAGA
26
27
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1 Period ÷ total PAGA Period Eligible Workweeks) x employee portion of the
2 PAGA Payment.
3

4 Defendants' records regarding the number of Eligible Workweeks worked for each
5 PAGA Member shall be used for purposes of calculating the employee portion of the
6 PAGA Payment owed to a PAGA Member. The Notice of Class Action Settlement will
7 include an Employee Information Sheet for each PAGA Member showing how much the
8 PAGA Member is expected to receive based on this formula and their number of Eligible
9 Workweeks worked during the PAGA Period.
10
11

12 **5.6.2. Timing of PAGA Payments to PAGA Members.** The
13 Settlement Administrator shall issue PAGA Payments no later than thirty (30) days after
14 the Effective Date. But said PAGA payments will be made as part of the Individual
15 Settlement Payment to any Settlement Class Member who does not submit a timely
16 request for exclusion, and PAGA payments will only be made separately to those Class
17 Members who exclude themselves from the Settlement. Any PAGA checks paid
18 separately to a Class Member who excludes himself or herself from the Settlement that
19 are not cashed within one hundred eighty (180) calendar days from the date of the
20 mailing of the distribution of checks shall be canceled or voided and the Administrator
21 shall pay over the amount represented by the checks, including any otherwise unpaid
22 interest accumulated in the QSF, to the California State Controller's Office Unclaimed
23 Property Program, with the identity of the recipient to whom the funds belongs. Any such
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1 cancellation shall not affect the validity of any release of claims provided for herein and
2 the PAGA Member shall be deemed to, nevertheless, be bound by the release of claims
3 provided herein.
4

5 **5.6.3. Tax Allocation of PAGA Payments to PAGA Members.**

6 Each PAGA Payment to the PAGA Members will be allocated as penalties. The
7 Settlement Administrator shall issue any necessary 1099 statements to PAGA Members
8 for their respective PAGA Payments, but need only issue such a 1099 statement
9 separately to a Class Member if the Class Member presents a timely Request for
10 Exclusion. Otherwise, a Settlement Class Member who is also owed a PAGA payment
11 shall only receive one such 1099 statement. PAGA Members shall be solely responsible
12 for paying all other applicable taxes on their respective PAGA Payments and shall
13 indemnify and hold harmless Defendants and the Released Parties from any claim or
14 liability for taxes, penalties, or interest arising as a result of PAGA Payments.
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19 **5.6.4. Tax Allocations of PAGA Payments Not Material.** The

20 Court's approval of the allocation of PAGA Payments set forth above is not a material
21 term of this Agreement. If the Court does not approve or approves a different tax
22 allocation of the PAGA Payments, then the other terms of this Agreement shall still
23 remain in effect.
24

25 **5.7. Final Funding of Gross Settlement Amount.** By fifteen (15) days

26 after the Effective Date, Defendants will deposit all of the Gross Settlement Amount into
27 the QSF established by the Settlement Administrator. Any interest accrued will be
28

distributed to class claimants except that if final approval is reversed on appeal, then Defendants are entitled to prompt return of the principal and all interest accrued.

6. RELEASES

6.1. Releases by Settlement Class Members. By operation of the entry of the Final Approval Order and Judgment, and except as to rights this Agreement creates, each member of the Settlement Class releases Defendants, and any parent, subsidiary, affiliate (including, without limitation, Jerry Erwin Associates Inc., and/or Jerry Erwin Associates LLC (doing business as JEA Senior Living)), predecessor or successor, and all agents, employees, officers, directors and attorneys thereof (“Releasees”), from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action, contingent or accrued, that were alleged or that reasonably could have been alleged based on the facts alleged in the Action, including without limitation, claims for violation of the California Labor Code, the Business & Professions Code (including Section 17200, *et seq.*), any IWC Wage Order; claims for restitution and other equitable relief, interest, wages, off-the-clock time, meal and rest period penalties, waiting time penalties, penalties for inaccurate wage statements, penalties pursuant to the Private Attorneys General Act (“PAGA”), penalties of any nature whatsoever, and any other benefit claimed that were alleged or that reasonably could have been alleged based on the facts alleged in the Action (“Released Class Claims”). This release shall apply to all claims

1 arising at any point during the Class Period, but this release shall not include unrelated
2 claims like retaliation, discrimination, workers' compensation, or ERISA claims or
3 claims arising outside the Release Period.
4

5 As to the Released Class Claims only, each Settlement Class Member waives all
6 rights provided by California Civil Code section 1542, which states:
7

8 A general release does not extend to claims that the creditor or
9 releasing party does not know or suspect to exist in his or her
10 favor at the time of executing the release and that, if known by
11 him or her, would have materially affected his or her settlement
12 with the debtor or released party.
13
14

15 **6.2. Releases by PAGA Members.** By operation of the entry of the Final
16 Approval Order and Judgment, and except as to rights this Agreement creates, the PAGA
17 Members and the State of California release Defendants, and any parent, subsidiary,
18 affiliate (including, without limitation, Jerry Erwin Associates Inc., and/or Jerry Erwin
19 Associates LLC (doing business as JEA Senior Living), predecessor or successor, and all
20 agents, employees, officers, directors and attorneys thereof ("Releasees"), from any and
21 all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's
22 fees, damages, actions or causes of action, contingent or accrued, that were alleged or that
23 reasonably could have been alleged based on the facts alleged in the Action and/or in
24 Plaintiff's January 29, 2020 letter to the LWDA, including without limitation, claims for
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1 violation of the California Labor Code, the Business & Professions Code (including
2 Section 17200, *et seq.*), any IWC Wage Order; claims for restitution and other equitable
3 relief, interest, wages, off-the-clock time, meal and rest period penalties, waiting time
4 penalties, penalties for inaccurate wage statements, penalties pursuant to the PAGA,
5 penalties of any nature whatsoever, and any other benefit claimed that were alleged or
6 that reasonably could have been alleged based on the facts alleged in the Action and/or in
7 Plaintiff's January 29, 2020 letter to the LWD ("Released PAGA Claims"). This release
8 shall apply to all claims arising during the PAGA Period, but this release shall not include
9 unrelated claims like retaliation, discrimination, workers' compensation, or ERISA
10 claims or claims arising outside the Release Period.
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15 **6.3. Additional Release by Class Representative.** In addition to the
16 release given by each Settlement Class Member and each PAGA Member, the Class
17 Representative also generally releases claims against each Released Party. This general
18 release includes claims arising from the Class Representative's relationship with
19 Defendants and their related and/or affiliated entities (including, without limitation, Jerry
20 Erwin Associates Inc., and/or Jerry Erwin Associates LLC (doing business as JEA Senior
21 Living)), including, without limitation, claims for discrimination, harassment, or
22 retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000 *et*
23 *seq.*, the California Fair Employment and Housing Act, California Government Code
24 Section 12900 *et seq.*, or any claims for violation of public policy. This general release
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1 by the Class Representative also includes a waiver of rights under California Civil Code
2 Section 1542, which states:

3
4 A general release does not extend to claims that the creditor or
5 releasing party does not know or suspect to exist in his or her
6 favor at the time of executing the release and that, if known by
7 him or her, would have materially affected his or her settlement
8 with the debtor or released party.
9
10

11 This release from the Class Representative is only effective upon the Court
12 granting final approval of the Settlement and only applies to claims that may be
13 released as a matter of law. This release does not include future claims that arise
14 after final approval.
15
16

17 **6.4. Settlement is Contingent Upon Release of Claims.** This Agreement
18 is conditioned upon the releases by the Settlement Class, PAGA Members, and Class
19 Representative as described herein, and upon covenants by the Settlement Class, PAGA
20 Members, and Class Representative that they will not participate in any actions, lawsuits,
21 proceedings, complaints, or charges in any court or before any administrative body
22 related to any claims they have released under this Settlement.
23
24

25 **6.5. Inadmissibility of Settlement Documents.** The Parties agree that
26 this Agreement and all exhibits thereto shall be inadmissible in any proceeding, except an
27 action or proceeding to approve, interpret, or enforce this Agreement. The Parties agree
28

1 that, to the extent permitted by law, this Agreement will operate as a complete defense
2 to—and may be used as the basis for an injunction against—any action, suit, or other
3 proceeding attempted in breach of this Agreement.
4

5 **7. SETTLEMENT APPROVAL PROCEDURE**

6
7 **7.1. Preliminary Approval.** Plaintiff shall submit to the Court a Motion
8 for Preliminary Approval of Class, and Representative Action Settlement. This motion
9 shall seek an order to preliminarily approve this Agreement according to the terms in this
10 Agreement and provide for the Notice of Class Action Settlement to be sent to Class
11 Members as specified in this Agreement, substantially in the form attached hereto as
12 Exhibit A. This motion shall include the bases for demonstrating that settlement amounts
13 are reasonable in light of the facts and controlling authorities pertaining to the claims
14 alleged. The motion shall also be accompanied by a declaration of Class Counsel
15 discussing the risks of continued litigation and the decision that the best interests of the
16 Class Members are served by the terms of this Agreement. Prior to filing, Class Counsel
17 will share their draft for comments by Defendants' counsel with reasonable notice before
18 filing (at least five (5) business days), which Class Counsel shall consider in good faith,
19 but shall not be required to accept.
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1 **7.2. Final Approval.** The Parties shall submit to the Court a Motion for
2 Final Approval Order, which shall include findings and orders: (a) approving the
3 Agreement; (b) adjudging the terms to be fair, reasonable, and adequate; (c) reciting the
4 Released Class Claims and Released PAGA Claims in full; (d) directing that the terms of
5 the Agreement be carried out; and (e) retaining jurisdiction to oversee enforcement of this
6 Agreement and the Court's orders. Prior to filing, Class Counsel will share their draft
7 for comments by Defendants' counsel with reasonable notice before filing (at least five
8 (5) business days), which Class Counsel shall consider in good faith, but shall not be
9 required to accept.
10
11

12 **7.3. Motion for Class Counsel Payment.** Along with the Motion for
13 Final Approval, Class Counsel may file a motion for Court approval of an attorneys' fees
14 and costs award, that is, attorneys fees of \$41,666, and costs of up to \$12,500.00.
15
16

17 **7.4. Motion for Class Representative Service Awards.** Along with the
18 Motion for Final Approval, Class Counsel may file a motion for Court approval of Class
19 Representative Service Award in the amount of up to \$3,000.00.
20

21 **7.5. Timing of Judgment.** After the Final Approval Order, the Parties
22 shall request that the Court: (a) enter Judgment in accordance with this Agreement,
23 without further fees or costs; and (b) enter an order permanently enjoining all members of
24 the Settlement Class and PAGA Members from pursuing or seeking to reopen claims that
25 have been released by this Agreement.
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7.6. Appeal Rights. Only an Objector has the right to appeal the Judgment, if the Judgment is in accord with this Agreement. The Class Representative and Class Counsel hereby waive any right to appeal any judgment, ruling, or order in this Action, including, without limitation, any Final Approval Order and any Judgment in the Action. This waiver includes all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings.

7.7. Schedule of contemplated events. By way of review, the events contemplated by the settlement approval procedure, and which the parties agree are to govern this settlement, are as follows:

Deadline for Defendants to provide current class list to Settlement Administrator	Within 10 business days of the later of preliminary approval of this settlement or court approval of settlement notice to the class
Deadline for Settlement Administrator to mail Notice of Class Action Settlement	Within 30 calendar days of the later of preliminary approval of this

	settlement or court approval of settlement notice to the class
Settlement Administrator to report to Class Counsel on Requests for Exclusion, Objections and other results of class notice	45 calendar days from date that Notice of Class Action Settlement is mailed
Last day for Class Members and PAGA Members to dispute their number of Eligible Workweeks	45 calendar days from date that Notice of Class Action Settlement is mailed or remailed.
Last day for Class Members to submit Requests for Exclusion or Objections	45 calendar days from date that Notice of Class Action Settlement is mailed or re-mailed
Deadline for Class Counsel to move for Final Approval, attorneys' fees and costs, and Class Representative Service Award	28 calendar days before the hearing on Final Approval.

Hearing on Final Approval and on motion for Class Counsel Payment and Class Representative Service Award	To be set by the Court [the Parties request a date to be set that is 120 days after the Court grants preliminary approval of this settlement or court approval of settlement notice to the class]
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8. MISCELLANEOUS

8.1. Materiality of Terms. Except as otherwise stated herein, each substantive term of this Agreement is material and has been relied upon by the Parties in entering into this Agreement. If the Court does not approve any substantive term, or if the Court effects a material change to the Agreement—such as increasing any amount that Defendants must pay—then the entire Agreement will be, at Defendants’ sole discretion, void and unenforceable. Where this Agreement states that a term is not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in effect, and does not give Class Counsel or any Class Member any basis to abrogate this Agreement.

8.2. No Tax Advice. Each Party to this Agreement (for purposes of this Paragraph, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the

1 Parties or their attorneys and other advisers, is or was intended to be, nor shall any such
2 communication or disclosure constitute or be construed or be relied upon as, tax advice
3 within the meaning of United States Treasury Department circular 230 (31 CFR part 10,
4 as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its
5 own, independent legal and tax counsel for advice (including tax advice) in connection
6 with this Agreement, (b) has not entered into this Agreement based upon the
7 recommendation of any other Party or any attorney or advisor to any other Party, and (c)
8 is not entitled to rely upon any communication or disclosure by any attorney or advisor to
9 any other party to avoid any tax penalty that may be imposed on the acknowledging
10 party; and (3) no attorney or advisor to any other Party has imposed any limitation that
11 protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
12 whether such limitation is legally binding) upon disclosure by the acknowledging party of
13 the tax treatment or tax structure of any transaction, including any transaction
14 contemplated by this Agreement.
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20 **8.3. No Impact on Employee Benefits.** No payment made under this
21 Agreement shall be considered as compensation or hours worked or hours paid for
22 purposes of determining eligibility, vesting, participation, or contributions with respect to
23 any employee benefit plan. For purposes of this Agreement, the term "benefit plan"
24 means every ERISA "employee benefit plan," as defined in the Employee Retirement and
25 Income Security Act of 1974 ("ERISA"), 29 U.S.C. section 1002(3). The term also
26 includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock
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1 appreciation, welfare, profit sharing, retirement, disability, vacation, severance,
2 hospitalization, insurance, incentive, deferred compensation, or any other similar benefit
3 plan, practice, program, or policy, regardless of whether any such plan is considered an
4 ERISA employee benefit plan.
5

6 **8.4. Language of Settlement Documents.** All settlement-related
7 documents to be filed with the Court or sent to Class Members must be approved by all
8 Parties before being filed or sent.
9

10 **8.5. Parties' Authority.** The signatories hereto represent that they are
11 fully authorized to bind the Parties to all the term of this Agreement. The Parties agree
12 that Class Members are so numerous that it is impossible or impractical to have each
13 Class Member execute this Agreement. This Agreement may be executed on behalf of
14 Class Members by a Class Representative and by Class Counsel.
15
16

17 **8.6. Entire Agreement.** This Agreement, which includes its Definitions,
18 Recitals, and all Exhibits attached hereto, constitutes the entire agreement on its subject
19 matter, and supersedes all prior and contemporaneous negotiations and understandings
20 between the Parties.
21

22 **8.7. Counterparts.** This Agreement may be executed in counterparts, and
23 each counterpart signed and delivered shall be deemed an original, and when taken
24 together with other signed counterparts, signed and delivered shall constitute one signed
25 Agreement, which shall be binding upon and effective as to all Parties.
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1 **8.8. Facsimile or Scanned Signatures.** A Party may sign and deliver this
2 Agreement by signing on the designated signature block and transmitting that signature
3 page via facsimile or as an attachment to an email to counsel for the other Party. Any
4 such signature shall be deemed an original for purposes of this Agreement and shall be
5 binding upon the Party who transmits the signature page.
6

7 **8.9. Waivers and Modifications to Be in Writing.** No waiver,
8 modification, or amendment of this Agreement—whether purportedly made before or
9 after the Court’s approval of this Agreement—shall be valid unless it appears in a writing
10 signed by or on behalf of all Parties, and then shall be valid subject to any required Court
11 approval. Any failure by any Party to insist upon the strict performance by the other
12 Party of any provision of this Agreement shall not be deemed a waiver of future
13 performance of the same provisions or of any other provision of this Agreement, and
14 such Party, notwithstanding such failure, shall have the right thereafter to insist upon the
15 specific performance of any provision of this Agreement. The time periods and dates
16 provided in this Agreement with respect to giving of notices and hearings are subject to
17 Court approval and modification by the Court or by written stipulation of Class Counsel
18 and Defense Counsel.
19

20 **8.10. Construction.** Each Party participated jointly in the drafting of this
21 Agreement, and its terms are not intended to be, and shall not be, construed against any
22 party by virtue of draftsmanship.
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1 **8.10.1. Exhibits Incorporated by Reference.** This Agreement
2 includes the terms set forth in any attached exhibit. Any exhibit to this Agreement is an
3 integral part of it.
4

5 **8.10.2. Headings.** The headings within this Agreement appear
6 for convenience of reference only and shall have no effect upon the construction or
7 interpretation of any part of this Agreement.
8

9 **8.10.3. Invalidity of Any Provision.** Before declaring any
10 provision of this Agreement invalid, the Court shall first attempt to construe the
11 provisions valid to the fullest extent possible consistent so as to render all provisions of
12 this Agreement enforceable.
13

14 **8.11. Duty to Cooperate.** Each Party, upon the request of another, agrees
15 to perform such acts and to execute and to deliver such documents as are reasonably
16 necessary to carry out this Agreement. In the same spirit, the Parties agree to make all
17 reasonable efforts to avoid unnecessary Administrative Costs.
18

19 **8.12. No Prior Assignments or Undisclosed Liens.** Each Class
20 Representative and the Class Counsel represent that they have not assigned, transferred,
21 conveyed, or otherwise disposed of any Released Claim or claim to attorneys' fees and
22 costs award to be paid under this Agreement. Each Class Representative and the Class
23 Counsel further represent and warrant that there are not any liens or claims against any
24 amount that Defendants are to pay under this Agreement. Each Class Representative and
25 Class Counsel agree to defend, to indemnify, and to hold Defendants harmless from any
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1 liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees,
2 resulting from a breach of these representations or from any lien or assignment.
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4 **8.13. Waiver of Right to Request Exclusion by Class Representative.**

5 Each Class Representative, by signing this Agreement, agrees not to request exclusion
6 from the Settlement. Each Class Representative, by signing this Agreement, further
7 represents that they have no objection to the terms of the Agreement and they believe the
8 terms to be fair, reasonable and adequate.
9

10 **8.14. Confidential Information.** Class Counsel will destroy all
11 confidential documents and information provided by Defendants within 60 calendar days
12 after the completion of the administration of this Agreement. Class Counsel further agree
13 that none of the information provided by Defendants shall be used for any purpose other
14 than prosecution of this Action.
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17 **8.15. Publicity.** Except as required to obtain preliminary approval in this
18 case, neither Plaintiff nor Class Counsel will publicize the Settlement in any way prior to
19 preliminary approval. Nothing in this Stipulation shall preclude Class Counsel from
20 communicating with members of the Settlement Class after preliminary approval, and
21 after preliminary approval Class Counsel is permitted to post court-filed documents on
22 their website for viewing by the Settlement Class. Except as required to obtain
23 preliminary approval in this case, Defendants, Plaintiff, and Class Counsel agree not to
24 publicize the Settlement in any way prior to preliminary approval. This includes, without
25 limitation, issuing any press releases, initiating any contact with the press, responding to
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1 any press inquiry or having any communication with the press about the fact, amount or
2 terms of the Settlement Agreement. Subsequent to the Court's issuance of the Final
3 Approval Order, Defendants, Plaintiff, and Class Counsel agree not to issue any press
4 releases or initiate any contact with the press regarding the fact, amount or terms of the
5 Settlement Agreement. Class Counsel also agrees not to post anything on their website
6 specifically referencing Defendants, other than providing a link or the content posted by
7 the Settlement Administrator. Nothing in this Stipulation shall preclude Class Counsel
8 from communicating with members of the Settlement Class after preliminary approval,
9 and after preliminary approval Class Counsel is permitted to post court-filed documents
10 on their website for viewing by the Settlement Class. Moreover, nothing prohibits Class
11 Counsel from responding to inquiries by the general public, including without limitation,
12 Class Members, members of the press or media, or other attorneys.

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17 **8.16. Continuing Jurisdiction.** The Court shall retain jurisdiction over the
18 implementation of this Agreement as well as any matter arising out of, or related to, the
19 implementation of this Agreement. The Court shall not have jurisdiction to modify the
20 terms of this Agreement without the consent of all Parties. The court shall maintain
21 jurisdiction to enforce the terms of this Agreement, including after entry of final approval
22 thereof.
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25 **8.17. Disputes.** If the Parties dispute the interpretation of this Agreement,
26 they shall first attempt to resolve the dispute informally through good faith negotiations,
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and, if those efforts are unsuccessful, they agree to mediate any such dispute. The Parties will split the costs of the mediator, and all parties will bear their own fees and costs.

8.18. Governing Law. All terms of this Agreement shall be governed by and interpreted according to California law.

8.19. Notice of Settlement to the LWDA. Plaintiff shall submit this Settlement Agreement and proposed settlement to the LWDA as required by Labor Code Section 2699(l)(2) at the same time that it is submitted to the Court for preliminary approval.

SO AGREED:

11/10/2021

Dated: October____, 2021



Plaintiff Annica B. Bowen, a.k.a. Annica
Palacio

Dated: October____, 2021

California HCJ EE Group, LLC

By: _____

(name)_____

_____ (title)

Dated: October____, 2021

Willow Springs Management CA, LLC

By: _____

(name)_____

_____ (title)

Dated: October____, 2021

California HCJ EE Group, LLC

By: _____

(name)_____

_____ (title)

Dated: October____, 2021

Folsom Investors, L.P. dba Empire Ranch

Alzheimer’s Special Care Center

By: _____

(name)_____

_____ (title)

Approval As To Form And Content By Counsel:

1 Dated: October____, 2021

STOEL RIVES LLP

3 By: _____

Attorneys for Defendants

10 11/11/2021

11 Dated: October____, 2021

LAW OFFICES OF STEPHEN M. HARRIS, P.C.

13 By: Stephen Harris

14 Stephen M. Harris, Esq.
15 Attorneys for Plaintiff ANNICA B.
16 BOWEN, a.k.a. ANNICA PALACIO,
17 individually, and on behalf of similarly
situated employees

18 11/10/2021

19 Dated: October____, 2021

SMITH & BENOWITZ

21 By: Louis Benowitz

22 Louis Benowitz, Esq.
23 Attorneys for Plaintiff ANNICA B.
24 BOWEN, a.k.a. ANNICA PALACIO,
25 individually, and on behalf of similarly
situated employees