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MARGARET RIVERA, KAY MANALIGOD,
and CHRISTINE ATENCIO

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MARGARET RIVERA, KAY MANALIGOD,
and CHRISTINE ATENCIO, on behalf of
themselves and all others similarly situated,
all Aggrieved employees, and the State of
California,

Plaintiffs,

vs.

HOME CARE ASSISTANCE, INC., HOME
CARE ASSISTANCE OF CALIFORNIA,
LLC, HOME CARE ASSISTANCE, LLC,
HOME CARE ASSISTANCE
MANAGEMENT, LLC, HOME CARE
ASSISTANCE HLDINGS LLC, and DOES 5
through 25,

Defendants.

Case No. RG20058229

CLASS AND REPRESENTATIVE
ACTION

ASSIGNED FOR ALL PURPOSES TO
DEPARTMENT 17

**DECLARATION OF RYAN L. HICKS
SUPPORTING MOTION FOR:
PRELIMINARY APPROVAL OF
SETTLEMENT AND PROVISIONAL
CERTIFICATION OF SETTLEMENT
CLASS; APPROVING THE NOTICE
OF PROPOSED CLASS
SETTLEMENT, APPOINTING
SETTLEMENT ADMINISTRATOR AND
SETTING FINAL APPROVAL
HEARING DATE**

(SUPPORTING MEMORANDUM AND
[PROPOSED] ORDER SUBMITTED
CONCURRENTLY HEREWITH)

Date: September 30, 2021

Time: 3:30 p.m.

Dept.: 17

Reservation No.: Preliminary Approval
of Class Settlement: R-2285277

I, Ryan L. Hicks, declare as follows:

1. I am an attorney licensed to practice law in the State of California, a Partner with Hoyer & Hicks and one of the attorneys of record for the Plaintiffs in the above-entitled action. I have

HICKS DECLARATION SUPPORTING MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

1 personal knowledge of the facts stated in this declaration and, if called as a witness, could
2 competently testify to the same.

3 2. I was admitted to practice law in California in 2008. Since then I have focused almost
4 exclusively on employment disputes representing plaintiffs. Specifically, I have represented
5 clients with claims of sexual discrimination and harassment, racial discrimination and
6 harassment, retaliation, breach of contract, and complex wage and hour disputes. The
7 majority of my practice consists of complex wage and hour class actions.

8 3. I specifically have acted or am acting as class counsel in numerous cases. A partial
9 list of class actions in which I have been counsel includes: *Wahid v. Nations Foodservice,*
10 *Inc.* and *Saavedra v. Nations Foodservice, Inc.* (Alameda County Superior Court Nos. RG
11 05246866 and RG 08421015) (wage and hour class action regarding misclassification of
12 restaurant managers); *Stockwell, et al v. City and County of San Francisco*, (N.D.Cal. Case
13 No. C 08-05180 PJH) (disparate impact age discrimination claims on behalf of police
14 officers); *Kauffman v. Bank of America* (D.Kan. Case No. 10-md-2138-JWL-KGS) (wage and
15 hour class action and multidistrict litigation and settlement concerning unpaid wages and
16 overtime and missed meal and rest periods under the FMLA and California law); In *In Re:*
17 *Sanofi-Aventis U.S., Inc. Wage and Hour Litigation* (N.D.Cal. Case Nos. 3:10-CV-04141
18 SBA; 3:10-CV-04672 SBA) (class of pharmaceutical sales representatives in a state-wide
19 misclassification case); *Neu-Helms v. UHS of Delaware, Inc.* (Alameda County Case No.
20 RG08425516) (post- certification settlement of class claims regarding missed meal and rest
21 periods for classroom assistants at schools for special needs children); *Al Lahham, et al vs.*
22 *Serra Medical Transportation*, (N.D.Cal. Case No. 3:12-cv-00355-CRB) (FLSA Collective of
23 drivers deprived of overtime pay and meal and rest breaks); *Okechukwu, et al. vs. DEM*
24 (putative class arbitration representing limousine drivers on claims of unpaid overtime, as
25 well as meal and rest break violations); *Sanchez-Ramirez v. The Consulate General of*
26 *Mexico in San Francisco* (N.D.Cal. Case No. 4:12-cv-03485-PJH) (represented non-exempt
27 workers on class claims of unpaid overtime and missed breaks); *Asghari, et al. v. Friendly*
28 *Cab Company, Inc.* (Alameda County Case No. AG11556435) (class settlement on behalf of

1 taxicab drivers alleging improperly assessed processing fees on credit card transactions);
2 *Shaghafi v. ValleyCare Health System* (Alameda County Case No. RG12618899) (class
3 settlement of meal and rest period claims on behalf of respiratory therapists); *Jenkins v.*
4 *Goodwill Industries of the Greater East Bay, Inc.* (Alameda County Case No RG12659632)
5 (class settlement of unpaid wages, overtime, and meal and rest period violations); *Guilbaud*
6 *v. Sprint/United Management Co. Inc.* (N.D.Cal. Case Nos. 3:13-cv-04357-VC and 3:14-cv-
7 02642-VC) (final approval of class and FLSA settlement for off-the-clock and missed meal
8 and rest period claims on behalf of class and FLSA collective of non exempt retail store
9 employees); I am currently counsel of record in the following pending wage and hour
10 class/representative actions: *Javier v. Eat24, LLC*, (SF Superior Court Case No. CGC-15-
11 545485) (class of online customer service specialists alleging missed meal and rest periods);
12 *Casas v. Mission-Hope Day Program, LLC et al.* (Alameda County Case No. RG15797671)
13 (class and PAGA claims of missed meal and rest periods for employees who care for special
14 needs adults); *Avila v. Cold Spring Granite Corp.* (E.D.Cal. Case No. 1:16-cv-01533-AWI)
15 (putative class of non-exempt employees alleging unpaid overtime due to non-compliant
16 Alternative Work Schedule); *Villarreal v. Perfection Pet Food* (E.D.Cal. Case No. 1:16-cv-
17 01661-LJO-EPG) (pet food factory workers alleging missed rest and meal periods for shifts
18 exceeding 10 hours); *Coppernoll v. Hamcor Inc.* (N.D.Cal. Case No. 3:16-cv-05936-WHA)
19 (piece-rate automotive service technicians alleging off the clock work, unpaid overtime,
20 missed breaks); *Coppernoll v. Hamcor Inc.* (Alameda County Case No. RG16843171)
21 (parallel PAGA-only state court action). *Ornelas v. Maplegear, Inc. d/b/a Instacart* (Santa
22 Clara Case No. 18CV323046) (PAGA-only claim involving in-store shoppers with meal and
23 rest period, unpaid wages and derivative claims); *Hartley v. On My Own Independent Living*
24 *Services, Inc.* (Cal.E.D. Case No. 2:17-cv-00353-KJM-EFB)(PAGA-Only Action for overtime
25 for in-home caregivers); *Thaoho v. Capitol Casino, Inc.* (Sacramento County Case No. 2018-
26 00228073) (Class action on behalf of casino dealers with meal period and tip theft violations);
27 and *Wiley v. Health Services Media, Inc.* (Cal.N.D. Case No. 3:18-cv-06680-SK) (Class
28 action involving house cleaners misclassified as independent contractors); *Gutierrez v. El &*

1 *El Wood Products Corp.* (Sacramento County Case No. 34-2019-00268549) (Class/PAGA
2 Action involving wage and hour claims of wood manufacturing workers); *Benroth v.*
3 *Glassybaby, LLC, et al.* (Alameda County Case No. HB19045978) (Class/PAGA action
4 involving wage and hour claims of glassblowers); *Landucci v. Freeman Expositions, LLC*
5 (N.D.Cal. Case No. 3:19-cv-07573-JCS) (Class/PAGA action involving paycheck cashing
6 fees on event workers); *Rivera, et al. v. Home Care Assistance, Inc. et al.* (Alameda County
7 Case No. RG20058229) (Class/PAGA action involving healthcare workers misclassified as
8 exempt from overtime); *Martinez v. Helzberg's Diamond Shops, Inc.* (C.D.Cal. Case No.
9 5:20-cv-01085) (Class/PAGA action involving retail store managers misclassified as exempt
10 from overtime); and *Hand v. Spread Your Wings, LLC, et al.* (Contra Costa County Case No.
11 C20-02287) (PAGA action involving improper payroll practices and bounced paychecks);
12 *Castaneda, et al. v. S&F Towing, LLC, et al.* (Alameda County Case No. RG18932965)
13 (Class/PAGA Action involving wage and hour claims of tow truck drivers and dispatchers).

14 4. On March 11, 2020, Plaintiffs filed their initial Complaint in the Alameda County
15 Superior Court on behalf of all Client Care Managers ("CCMs") and/or Staffing Managers
16 ("SMs") who worked for Defendants during the four years prior to the date of filing, alleging
17 claims of (1) Failure to Provide Overtime Compensations; (2) Meal and Rest Period
18 Violations; (3) Inaccurate Wage Statements; (4) Waiting Time Penalties; and (5) Unfair
19 Business Practices. Plaintiff concurrently provided notice by U.S. Certified Mail to the Labor
20 Workforce and Development Agency ("LWDA") and also to Defendant of their intent to seek
21 penalties on behalf of the State pursuant to PAGA. On May 15, 2020, Plaintiffs filed their First
22 Amended Complaint adding a claim for (6) PAGA Penalties against HCA, Inc. and adding the
23 other HCA defendants as DOE defendants. Plaintiffs submitted an amended PAGA notice
24 adding the HCA DOEs that same day. Following some disputes regarding service on the
25 various HCA entities, the operative Second Amended Complaint was filed on August 28,
26 2020 adding the other recently added HCA entities to the PAGA claim.

27 5. Weeks after this action was filed (which was days before California imposed the first
28 COVID lockdown), HCA required PCMs still working there to execute arbitration agreements

1 by packing them with COVID-related policies. But Plaintiffs maintain that those agreements
2 were improper and misleading communications, and Plaintiffs maintain that they are void as
3 to the claims asserted in this action. HCA also purports to have secured severance releases
4 from a number of PCMs after this action was filed. However, Plaintiffs are informed that those
5 form severance agreements similarly omit essential information regarding this action, the
6 claims asserted, and the contact information of Plaintiffs' counsel, rendering them
7 unenforceable as to these claims. A number of PCMs interviewed have also reported that
8 managers instructed them not to speak to Plaintiffs' counsel regarding this matter, and that
9 to do so would violate company policy and cost them their jobs. Indeed, after initially informing
10 us of this fact, a number of PCMs cut off further communications with Plaintiffs' counsel.

11 6. Plaintiffs propounded sets of form interrogatories, special interrogatories, and
12 requests for production of documents on June 23, 2020. HCAC provided responses, and the
13 parties engaged in a lengthy meet and confer process, that resulted in Plaintiff filing a motion
14 to compel further responses that was granted in part and denied in part by this Court on
15 January 28, 2021. *Id.* As a result of the motion to compel, HCAC served supplemental
16 discovery responses in February 2021, and the parties completed a *Belaire* notice process
17 on April 23, 2021. Following the *Belaire* process, Plaintiffs engaged in an extensive outreach
18 process and contacted every PCM for whom contact information was provided for the
19 purpose of interviewing them regarding the class claims. Plaintiffs were able to interview 62
20 individuals and obtained declarations from 21 of them. Defendant also propounded
21 interrogatories and requests for production on all three Plaintiffs and took their depositions.

22 7. Throughout the litigation the parties engaged in an extensive pre-certification,
23 voluntary exchange of information, including the exchange of documents and voluminous
24 personnel and payroll data, through formal and informal discovery methods. The Parties
25 additionally each conducted independent investigations and fact-finding.

26 8. Prior to the mediation, Defendants provided documents related to their meal and rest
27 period, payroll, and timekeeping policies during the Class Period, along with summary data
28 through May 13, 2021, which Plaintiffs used to prepare a damages analysis.

1 9. Plaintiffs' counsel compiled the data produced by Defendants, and estimated
2 damages on all claims for the entirety of the class period. Plaintiff's counsel has obtained
3 sufficient discovery to evaluate the likelihood of success on the merits and assess the
4 potential risks facing Plaintiff and the putative class.

5 10. Based on the data provided by Defendants, Plaintiffs calculated the maximum
6 potential damages on all of the claims, based on a conservative average workweek of 60
7 hours. Plaintiffs estimated that the maximum damages that could have been awarded at trial
8 totaled approximately \$59,569,987.38, comprised of unpaid overtime (\$29,594,956.90) meal
9 period premiums (\$4,626,039.01), rest period premiums (\$4,626,039.01) inaccurate wage
10 statement penalties (\$653,000.00), and waiting time penalties (\$2,330,952.40 for a total of
11 \$41,830,987.38 in non-PAGA exposure). Even if class members were found to work only 10
12 hours of overtime per week, the non-PAGA exposure exceeds \$27 million. Plaintiff also
13 estimated a maximum of \$17,739,000.00 in duplicative PAGA penalties for violations of:
14 Labor Code §§ 203 (\$24,000.00), 204 (\$1,306,000.00), 210 (\$1,306,000.00), 226
15 (1,306,000.00), 226.3 (\$6,470,000.00), 226.7 (\$1,306,000.00), 510 (\$1,306,000.00), 512
16 (\$1,306,000.00), 558 (\$653,000.00), 1174.5 (\$120,000), 1197 (\$1,306,000.00), 2699(f)
17 (\$1,306,000.00), and 2810.5 (\$24,000.00).

18 11. Through the discovery propounded by both parties to date, Class Counsel had
19 conducted sufficient investigation and discovery to properly assess going into the mediation
20 the risks of continuing to litigate the case through trial and any subsequent appeals.

21 12. On June 1, 2021, the case was mediated virtually by Tripper Ortman, Esq., a highly
22 respected and neutral mediator who specializes in wage and hour class and representative
23 actions. Plaintiffs submitted a mediation brief that summarized the evidence and their position
24 regarding the relevant case law. Plaintiffs also presented their analysis of Defendants'
25 potential exposure.

26 13. Defendants submitted a mediation brief asserting their position that no class would be
27 certified and that they would also prevail on the merits against the Plaintiffs and any other
28 PCMs based on individualized questions as to whether each individual PCM was

1 misclassified as exempt, and if a PCM was misclassified as to how many hours each PCM
2 worked and whether and why any rest or meal periods were not taken. With Mr. Ortman's
3 assistance, the parties entered into a Memorandum of Understanding as to the material terms
4 of the Settlement at the mediation. Ultimately, the parties reached final agreement and
5 executed the Settlement Agreement on August 11, 2021. A true and correct copy of the fully
6 executed agreement is attached hereto as Exhibit 1. The agreement itself includes the
7 [Proposed] Class Notice (Exhibit 1 thereto).

8 **PROVISIONAL SETTLEMENT CERTIFICATION REQUIREMENTS**

9 14. Defendants identified 388 class members, persons who worked for it as CCMs and/or
10 SMs in California during the Class Period. There is no dispute that the numerosity
11 requirement is satisfied.

12 15. It is undisputed that Defendants applied the same practices and policies to the PCMs
13 during the Class Period with respect to its meal and rest period policies, as they resulted from
14 the uniform classification of CCMs and SMs as exempt employees. The question of whether
15 those policies were facially violative of the Labor Code and applicable Wage Order are
16 common to all class members, and the commonality requirement is satisfied.

17 16. It is further undisputed that Plaintiffs were subject to the same uniform practices and
18 policies with respect to the alleged violations as all of the other PCMs. Thus, their claims are
19 typical of the proposed settlement class.

20 17. Plaintiffs and counsel are aware of no conflicts among themselves or with any member
21 of the proposed settlement class, and have adequately served the best interests of the class
22 throughout this litigation.

23 18. While Class Counsel remains ultimately confident in the merits of our legal arguments,
24 Plaintiffs were put in the position of negotiating a settlement at this juncture based on
25 unsettled dispositive law and conflicting evidence. Plaintiffs and the class would potentially
26 face years of litigation and individual arbitrations to achieve a verdict which still may not have
27 been collectible for many years due to potential appellate issues, uncertainties regarding the
28 precise amount of damages due to each PCM. PCMs' unwillingness to sign declarations out

1 of fear of retaliation Plaintiff's certification motion difficult. It was agreed upon by Plaintiff's
2 Counsel and the class representative that a settlement at this juncture in the sum agreed
3 upon was in the best interests of the class.

4 **OVERTIME CLAIMS**

5 19. Plaintiffs assert that Defendants committed overtime violations to the extent that they
6 misclassified PCMs as exempt and failed to pay them overtime and double-time.

7 20. Section 510 of the California Labor Code and applicable wage orders require
8 employers to pay overtime for hours worked beyond eight in a day and forty in a week (and
9 double-time as provided in the statute and Wage Order). The Wage Orders define "hours
10 worked" as the "time during which an employee is subject to the control of an employer and
11 includes all the time the employee is suffered or permitted to work, wither or not required to
12 do so." Labor Code § 1194(a) states that employees are entitled to recover the unpaid
13 balance of their minimum wage and overtime compensation.

14 21. Plaintiffs contend Defendants improperly classified them and the CCMs and/or SMs
15 as exempt employees and therefore not entitled to overtime pay.

16 22. A review of Defendants' policies and the testimony of CCMs and SMs revealed that
17 PCMs were expected to be on call "24/7" and to drop whatever they were doing and respond
18 to calls at any time of day or night. During the entirety of the statutory period, Defendants
19 misclassified PCMs and paid them a salary. Dozens of PCMs interviewed by Plaintiffs'
20 counsel reported working, on average, at least 20 hours of overtime per week, and many
21 reported working between 80 and 90 hours per week. However, the PCMs spent little, if any,
22 time engaged in duties that would satisfy any overtime exemption under California law. The
23 PCMs certainly did not spend over 50% of their time engaged in exempt duties requiring
24 independent discretion and judgment such that any exemption would be appropriate.

25 23. The CCMs served as the point of contact for clients and essentially worked as
26 customer service representatives. Their work involved common sense and clearly defined
27 guidelines that a CCM followed and did not set. If a situation was more complex, the CCM
28 had to consult with their supervisors or someone further up the HCA chain of command for

1 instruction on what to do. The CCMs are not medical clinicians. They do not receive any
2 commissions, so they are not salespersons. CCMs were not managers and did not directly
3 supervise anyone. They were themselves directly supervised by their own supervisors. They
4 did not set any HCA policies. They did not spend more than 50% of their time engaged in
5 exempt duties or regularly exercise independent discretion or judgment. The CCMs
6 interviewed by Plaintiffs reported working an average of at least 60 hours per week. This
7 increased substantially when the CCM was “on-call,” fielding the night and weekend calls.
8 Even when they were not “on call,” they fielded communications from clients, SMs, and
9 supervisors essentially every night after they left the office, every morning before they arrived,
10 and every weekend.

11 24. The SMs were the point of contact for the caregivers, and their main responsibility was
12 to fill open shifts when care for a new client was first requested or when caregivers called off
13 shifts for various reasons, which happened constantly. In order to fill these shifts, the CMs
14 would essentially plug in information from the check boxes on the assessment forms into
15 HCA's ClearCare system, which would then provide a list of caregivers who met the
16 requirements of the particular client. The SMs did not engage in a lengthy assessment of a
17 particular caregiver's skills or qualifications. They simply filled a position with the first
18 caregiver who was willing to take the shift and moved on to the next open shift to fill. SMs
19 interviewed by Plaintiffs' counsel have uniformly indicated that they spent the vast majority
20 of their time working to fill shifts, with most reporting that they spent from 80-90% of their time
21 engaged in such duties, working on average 60-65 hours per week, and up to 80-90 hours
22 per week if they were assigned to be “on call.” As with the CCMs, their jobs rarely, if ever,
23 required independent discretion or judgment, and certainly not regularly. The SMs
24 interviewed reported that they did not directly supervise anyone on a daily basis, and
25 generally could not hire, fire, or discipline employees without the authorization of someone
26 above them in the hierarchy, and in any event, even if they could on occasion, they did not
27 spend half of their time performing such tasks. They clearly did not set HCA policy, or
28

1 otherwise exercise independent discretion or judgment such that they could be considered
2 exempt as administrators.

3 25. However, Some PCMs interviewed by Plaintiffs' outreach team reported differences
4 in staffing levels, hours worked performing various tasks, responsibilities ,and even job duties
5 depending on the size of an HCA office, the number of other CCMs and/or SMs in that office,
6 and the geographic location within California. Other PCMs interviewed by our outreach team
7 indicated that their work did qualify for the executive exemption, while others reported sales
8 duties and responsibilities that would potentially qualify them for the outside sales exemption,
9 rendering certification on the misclassification issue a very difficult proposition in light of these
10 many potential individualized issues. Roughly one-third of the PCMs interviewed provided
11 information that was inconsistent with Plaintiff's theories of the case.

12 26. Since the amount of time that many PCMs reported working varied by the task, the
13 location, the staffing levels of their office, and even the day, the likelihood that individualized
14 questions would predominate for the question of whether an individual PCM was properly
15 classified as exempt was high, and could very likely preclude certification on all claims.

16 27. Plaintiffs estimate that Defendants' potential exposure was approximately
17 \$29,594,956.94 for the overtime claim.

18 28. Plaintiffs' counsel were aware of these risks and took them into account when
19 discounting the claims for settlement purposes.

20 **MEAL AND REST PERIOD CLAIMS**

21 29. As the California Supreme Court has noted, an employer meets the requirements of
22 the applicable Wage Order's meal period requirement if the employee (1) has at least 30
23 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the
24 entire period. *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1036.

25 30. Given their misclassification as exempt employees, CCMs and SMs were not
26 appropriately compensated for the massive hours they worked each week. Furthermore, they
27 report that they were told meal and rest period policies did not apply to them because they
28

1 were salaried, despite many PCMs' complaints about the lack of breaks and heavy
2 workloads.

3 31. It is essentially undisputed and confirmed by all PCMs interviewed that they were told
4 they were not entitled to off-duty meal or rest periods because they were salaried, which is
5 supported by HCA's handbook. If the policies do not apply to salaried employees, then HCA
6 cannot argue that it "provided" meal periods or "authorized and permitted" rest periods.
7 Furthermore, the PCMs report that they did not actually get meal or rest periods in any event.

8 32. Any dispute about the extent to which timely meals were not provided is an issue
9 related to individual damages, not liability. However, Defendants contended that such
10 individual questions regarding when and whether each meal period for each PCM was
11 missed or untimely make the case unsuitable for class treatment. Defendants also asserted
12 that meal periods were taken when the employees wanted to take them. Regardless of
13 whether a class is certified, the result would undoubtedly be appealed by the losing parties
14 based on *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, and *Duran v. U.S. Bank Nat.*
15 *Assn.* (2014) 59 Cal. 4th 1, recent cases which have muddied the waters as to the propriety
16 of representative testimony as evidence of liability in class actions. *But see Tyson Foods,*
17 *Inc. v. Bouaphakeo* (2016) 577 U.S. ___, 136 S.Ct. 1036.

18 33. This inquiry is potentially highly individualized as to the timing of each meal/rest period,
19 reasons that the meal period was less than 30 minutes or a rest period was less than 10
20 minutes, and whether a *de minimis* argument even applies to a meal or rest period,¹ which
21 made class certification on the issue more difficult.

22 34. Plaintiffs' counsel were aware of all of these risks and took them into account when
23 discounting the claims.

24 **INACCURATE WAGE STATEMENT CLAIMS**

25
26

27 ¹¹ We note that the California Supreme Court recently held that the federal *de minimis* rule is not incorporated
28 into the California wage and hour law. *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829. However, the Court
also found that such a rule may apply under the factual circumstances of an individual case, rendering appellate
review of this case almost a certainty.

1 35. Plaintiffs contend that Defendants' wage statements were necessarily inaccurate as
2 PCMs were misclassified and their wage statements failed to include all hours worked. The
3 wage statements were inaccurate in other respects as well giving rise to penalties pursuant
4 to Labor Code § 226 due to the failure to record meal periods, all hours worked, and premium
5 wages owed.² Common questions predominate in claims regarding such claims, which are
6 well-suited to class treatment. See *Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal.App.4th
7 1286, 1304

8 36. Defendants maintain that the class members received all meal and rest periods to
9 which they were entitled, thus none of the wage statements were inaccurate. They further
10 contend that even if the wage statements were inaccurate, the class members did not suffer
11 any "injury" required to establish liability for penalties under § 226.

12 37. Plaintiffs' counsel were aware of all of these risks and took them into account when
13 discounting the claims.

14 **WAITING TIME PENALTIES**

15 38. The claims for waiting time penalties are derivative of the meal and rest period and
16 unpaid wages claims. If meal or rest period premiums or other wages were not paid to class
17 members upon termination of their employment, then Plaintiffs contend that the Class
18 Members are entitled to waiting time penalties. However, Defendants maintain that the class
19 members were properly classified, and not entitled to meal periods or owed any unpaid
20 wages, and are thus not entitled to any damages or penalties for waiting time penalties.

21 39. Furthermore, as discussed in footnote 2, supra, there is now a split in authority as to
22 whether waiting time penalties can be recovered at all when based upon an underlying
23 meal/rest period violation.

24
25
26 ² We also note that there is one recent California case, that asserts in dicta that claims for inaccurate wage
27 statement and waiting time penalties cannot be based on a claim for missed meal or rest breaks (*Naranjo v.*
28 *Spectrum Sec. Servs., Inc.* 40 Cal.App.5th 444 (2019), review granted, 455 P.3d 702 (Jan. 2, 2020), contrary
to the vast majority of cases reaching the opposite conclusion. See *In re: Autozone, Inc.* (N.D.Cal. Aug. 10,
2016) 2016 WL 4208200 (disagreeing with *P.F. Chang's* "[b]ecause the Court is persuaded by the numerous
[courts] recognizing that section 203 penalties are available for wage payments under section 226.7....").

1 40. Plaintiffs' counsel were aware of all of these risks and took them into account when
2 discounting the claims.

3 **DERIVATIVE PAGA PENALTIES**

4 41. Plaintiffs' claims on behalf of similarly aggrieved PCMs seeking penalties under the
5 PAGA are also derivative of the meal and rest period claims discussed above, which also
6 resulted in violations of Labor Code §§ 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558,
7 1174.5, 1197, 2699(f), and 2810.5 in addition to the violations asserted hereinabove. While
8 Plaintiffs are confident that they would have been able to proceed on their PAGA claims for
9 penalties regardless of whether a class was certified under CCP § 382, and despite
10 Defendants' various purported and challenged Individual Releases and arbitration
11 agreements, Defendants still maintain that they would have prevailed on all or most of the
12 claims, negating the derivative PAGA claims.

13 42. Notwithstanding Defendants' asserted defenses based on the underlying
14 misclassification claim, the case law regarding the wholly-derivative PAGA claims remains
15 inconsistent at best, and downright murky and conflicted at worst. For example, there is at
16 least one case which ruled that only the named Plaintiff could recover penalties for violations
17 suffered by the other PCMs (as in a *qui tam* lawsuit), while other Courts have ruled that each
18 aggrieved employee is entitled to the 25% of the penalties that do not go to the state based
19 on conduct that the individual suffered. The California Supreme Court's recent opinion in
20 *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 recently
21 characterized PAGA claims as *qui tam* claims, but did not touch upon any issues regarding
22 the propriety of potential multiple PAGA penalties being awarded based upon the same
23 unlawful conduct. Also, the *Naranjo* case discussed above calls into doubt whether § 226.3
24 penalties can even be awarded based on rest and meal period violations.

25 43. Courts have discretion to reduce any amount of penalties awarded under PAGA, and
26 it is very possible that the Court could find that a \$250/\$1,000 penalty under the PAGA for a
27 violation of §226.3 is duplicative of the \$50/\$100 penalty provided specifically to employees
28 for a violation of §226(e), since the exact same conduct gives rise to the exact same violations

1 under both statutes. While Plaintiffs maintain that the PAGA penalties stack on top of any
2 penalties available to employees for the underlying violations, there is currently no uniform
3 guidance or authority available to predict whether this Court would award all of the PAGA
4 penalties (an estimated \$17,739,000.00), deem them to be wholly duplicative, or something
5 in between. Even if the Court were to grant substantial PAGA penalties at trial, the lion's
6 share would go to the State instead of the PCMs whose rights were violated, and only 25%,
7 or \$4,434,750.00 would go to the aggrieved employees themselves. Any PAGA award would
8 be influenced by the presence or absence of a certified class, and presumably the PAGA
9 penalties awarded would be of a greater amount if a class were not certified at trial. Since all
10 of the penalties arise out of the underlying misclassification claim (and the derivative claims
11 based thereon), there is a substantial risk that even if Plaintiffs prevail on the PAGA claims,
12 any award could be reduced to nearly nothing by the Court so as to prevent the Plaintiff and
13 Class Members from recovering twice (or over a dozen different separate penalties in
14 addition to those already provided for their underlying primary claims) for the exact same
15 violations, especially taking into account the fact that the PCMs could only recover 25% of
16 any such award.³

17 44. My firm has been litigating PAGA claims since the statute's inception, and also has
18 regular practice before the Labor Commissioner, which is charged (like a plaintiff under the
19 PAGA) with enforcing the Labor Code. In our experience, Labor Commissioners never "stack"
20 penalties. Indeed, in settlement conferences, the Labor Commissioner encourages that the
21 aggrieved employees agree to waive penalties in exchange for payment of all or a substantial
22 portion of the underlying unpaid wages.

23 45. Courts also regularly exercise discretion in reducing PAGA penalties. The Labor Code
24 grants courts discretion to reduce a PAGA penalty if, "based on the facts and circumstances
25

26 ³ But note, because Labor Code § 226 already incorporates its own penalty provisions, an award of additional
27 PAGA penalties – or an award of the maximum penalty amount provided by PAGA – is uncertain. See Lab.
28 Code § 2699(f); see also *Guifi Li v. A Perfect Day Franchise Inc.*, (N.D. Cal. 2012) 2012 WL 2236752 at *17.
Moreover, even assuming Plaintiff's remaining claims qualify for PAGA penalties, any such award is not
automatic. Cal. Lab. Code § 2699(e)(2); see also *Thurman v. Bayshore Transit Mgmt., Inc.*, (2012) 203
Cal.App.4th 1112, 1135-36.

1 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
2 oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2); *Romo v. GMRI, Inc.*, 2014 WL
3 11320647, at *7 (C.D. Cal. Feb. 18, 2014) (“The court retains discretion over awards under
4 a PAGA claim”); *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413, at *4 (C.D.
5 Cal. Jan. 31, 2011) (“The PAGA text also provides the Court with the discretion to limit the
6 amount Plaintiff may recover from the employer.”); *Bright v. 99c Only Stores*, 189 Cal. App.
7 4th 1472, 1480 n.8 (2010) (“The trial court has discretion to award less than the maximum
8 amount of the civil penalty”).⁴

9 46. Counsel submitted a copy of the proposed settlement agreement to the LWDA via its
10 online submission system on the same date that this motion was filed.

11 47. Plaintiffs’ counsel were aware of all of these risks and took them into account when
12 discounting the claims.

13 **FURTHER TESTIMONY REGARDING THE VALUE OF THE SETTLEMENT**

14 48. Class Counsel considered all of the risks discussed hereinabove in light of the amount
15 of the overall settlement offered and the amount actually to be disbursed to the Participating
16 Class Members. Under the Settlement Agreement, the Class Members are to receive a
17 reasonable percentage of the maximum estimated recovery for all their claims based on the
18 substantial risk that Defendants would prevail at either the certification stage, or at trial with
19 respect to the separate claims, or successfully move to compel individual arbitrations for over
20 half of the PCMs, and that any PAGA penalties could likely be substantially reduced or
21 eliminated as duplicative. Furthermore, based on the substantial costs of statistical experts
22 and near certainty that any judgment would be appealed on any one of multiple issues due
23 to the lack of case law on point (including: “down time” as off duty meal/rest period time, the
24 use of representative testimony at trial, whether common or individual questions predominate
25

26 ⁴ See, e.g. *Parr v. Golden State Overnight Delivery Service, Inc.*, 2014 WL 11199453, *5–6 (Cal. Superior July
27 10, 2014) (95% reduction of wage statement penalties); *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th
28 504 (90% reduction on meal period penalties); *Kaanaana v. Barrett Bus. Servs., Inc.* (2018) 29 Cal. App. 5th
778 (87% reduction on penalties related to meal period violations); *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12,
2011) 2011 WL 7563047, at *4 (82% reduction); *Aguirre v. Genesis Logistics* (C.D. Cal. Dec. 30, 2013) 2013
WL 10936035, at *3 (72% reduction).

1 on the underlying claims or with respect to damages, whether any of the PAGA penalties
2 sought are duplicative, etc.), it would likely take many years for the class to recover anything
3 if they prevailed at trial, and in subsequent appeals on all issues. Based thereon, Plaintiffs
4 and their Counsel concluded that this settlement constituted a fair and reasonable recovery
5 for the class.

6 49. While Plaintiffs sought injunctive relief in the complaint, Defendants are reviewing their
7 policies and will likely reclassify the PCMs and/or change their job duties prior to the final
8 approval date. Going forward Defendants maintain that they will be fully compliant with the
9 overtime exemption laws with respect to the PCMs. Thus, prospective injunctive relief is
10 unnecessary and without value.

11 **CLASS REPRESENTATIVE SERVICE AWARDS**

12 50. The Plaintiffs will submit declarations concurrently with their motion for final approval
13 which will inform the Court of the time they spent on behalf of the class in this litigation. Based
14 upon the time and effort Plaintiffs put into this case, we believe that a modest enhancement
15 award of \$15,000 per Plaintiff (less than 1% of the total settlement each) is appropriate and
16 reasonable, though we note that in our experience Courts usually do not address
17 enhancement awards until the Final Approval stage.

18 **ALLOCATION OF PRO RATA SETTLEMENT AWARDS**

19 51. Per the Settlement Agreement, one-third (33.33%) of each CM's *pro rata* Individual
20 Settlement Award payment will be treated as non-wage alleged unpaid penalties for which
21 an IRS Form 1099 will be issued, if required; one-third (33.33%) will be treated as non-wage
22 alleged unpaid interest for which an IRS Form 1099 will be issued, if required; and one-third
23 (33.33%) will be treated as wages for which an IRS Form W-2 shall be issued. Individual
24 PAGA Payments made to Settlement Class Members will be designated as alleged unpaid
25 penalties in their entirety, for which an IRS Form 1099 will be issued, if required. This
26 allocation is appropriate because the potential damages arise out of the unpaid overtime and
27 break premium claims, but a significant portion of the total exposure was based on the
28 derivative penalties, including waiting time penalties, and prejudgment interest over the

1 course of the entire class period. As discussed elsewhere in this declaration and the motion
2 it supports, the PAGA penalties are subject to discretionary reduction, and only 25% of those
3 penalties could be awarded to the class members. The tax allocation is appropriate.

4 **ESTIMATED ADMINISTRATION COSTS**

5 52. The parties sought estimates of administration costs from proposed Settlement
6 Administrator Simpluris, Inc. A true and correct copy of that estimate is attached hereto as
7 Exhibit 2. Simpluris's website (www.simpluris.com) states that it has "extensive experience
8 in the realm of labor and employment class action settlements with a niche in Wage and
9 Hour" and has "done thousands of employment/wage and hour settlements."

10 53. Plaintiffs and their counsel are unaware of any instance where Simpluris has been
11 rejected as class administrator due to a lack of experience and/or efficacy. Defense counsel
12 also reviewed estimates from Rust Consulting before choosing Simpluris, as the differences
13 between estimates were negligible.

14 **REASONABLE ATTORNEYS' FEES AND COSTS**

15 54. In their fee motion to be submitted with the final approval papers, Class Counsel will
16 request one-third (33.33%) of the gross settlement amount, \$750,000, plus reimbursement
17 of their reasonable costs incurred. In this case, given the results achieved, the effort
18 expended litigating the case, expeditious resolution of the matter, and the difficulties
19 attendant to litigating this case (including a host of service issues related to the COVID-19
20 pandemic which nearly required an attempt a service by publication, disputed Individual
21 Release agreements, and disputed post-filing arbitration agreements for nearly half of the
22 putative class), such an award from the common fund settlement is reasonable and fair.

23 55. Class Counsel's compensation in this action was and is wholly contingent. Unlike
24 attorneys who are paid for all hours worked irrespective of the result that they might obtain
25 for the client, any attorneys' fees and reimbursement of expenses Class Counsel may collect
26 in connection with this action are fully contingent on their ability to obtain compensation for
27 their clients though success at trial or through settlement, as here, and which is further
28 contingent on Court approval. Being awarded attorneys' fees based on a reasonable

multiplier encourages my firm to continue to take on a contingency basis difficult and time-consuming cases representing employees who are denied wages, but whose claims are based in unsettled areas of wage and hour law.

56. Class Counsel rarely accepts hourly work from fee-paying clients in such cases and has followed this practice for many years. Instead, we maintain active contingent fee practices. Nearly every day Class Counsel receives requests for representation, new case inquiries and/or offers to associate with other lawyers and law firms to prosecute complex and class action cases. The fact that Class Counsel has devoted substantial time and resources to this action required the firms to forego other potentially lucrative, or at least market rate, employment. The Plaintiffs paid no retainer fee, and Class Counsel paid for all litigation costs out of pocket and with no guarantee of any reimbursement. HH has invested a substantial amount of attorney hours into this case with no guarantee of payment. Assuming the Court grants final approval in late 2021, Class Counsel will have two years to be paid anything. Since Class Counsel typically represents employees who were denied wages or wrongfully terminated and who cannot afford legal representation, nearly all of Class Counsel's cases are pursued on a contingent basis. Being awarded attorneys' fees encourages and enables Plaintiff-side firms like HH to continue to represent such disenfranchised employees.

57. There was no guarantee of compensation or reimbursement. Rather, counsel undertook all the risks of this litigation on a completely contingent fee basis. These risks were front and center. Defendants' vigorous and skillful defense further confronted Class Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case, or having individual class members retain their own counsel if their claims were compelled to individual arbitration upon certification of a class. Nevertheless, Plaintiffs and Class Counsel committed themselves to developing and pressing Plaintiffs' legal claims to enforce the employees' rights and maximize the class and collective recovery. During the litigation, counsel had to turn away other less risky cases to remain sufficiently resourced for this one. The challenges that Class Counsel had to confront and the risks they

1 had to fully absorb on behalf of the class and collective here are precisely the reasons for
2 multipliers in contingency fee cases.

3 58. Class Counsel had invested hundreds of hours into this case over a period of nearly
4 two years. Our cumulative lodestar of approximately \$290,000 as of the date of this filing has
5 continued and will continue to increase over the remaining six to twelve months due to the
6 preparation of the final approval papers, preparation and attendance at any remaining
7 hearings, correspondence with CMs, and settlement administration and oversight. Class
8 Counsel has incurred and will continue to incur these fees performing the work described
9 herein. Class Counsel is seeking a modest multiplier in this case which we estimate will be
10 below 2.5 as of final approval. Class Counsel's actual litigation costs will be provided to the
11 Court with its Final Approval moving papers as contemplated by the Settlement Agreement.
12 Class Counsel also requests reimbursement for these expenses. Class Counsel respectfully
13 submits that a one-third recovery for fees is modest and appropriate and should be
14 preliminarily approved as fair and reasonable.

15 59. Though a court recently found that billing records constituted confidential and
16 privileged attorney-client communications (*County of Los Angeles Board of Supervisors et*
17 *al. v. Superior Court* (2015) 235 Cal.App.4th 1154, *review granted* July 8, 2015), we will
18 provide counsel's hours incurred if required with their motion for final approval. In counsel's
19 experience, we will incur approximately 50-75 additional hours preparing for final approval,
20 responding to inquiries from class members, communicating with the administrator and other
21 tasks associated with this case following preliminary approval.

22 60. Defense counsel vigorously defended their clients' interests in this litigation. From the
23 outset of the litigation, Defendants attempted to extract releases from dozens of PCMs, and
24 attempted to require all of the PCMs whom they still employed to check off on an arbitration
25 agreement buried in COVID-related policies just after this action was commenced.
26 Defendants undertook a series of strategies designed to weaken the class and make class
27 certification inappropriate. For instance, HCA required PCMs still working there to execute
28 purported arbitration agreements by packing them with COVID-related policies, or alleged

1 severance releases that omitted essential information related to this action. A number of
2 PCMs interviewed also reported that managers instructed them not to speak to Plaintiffs'
3 counsel regarding this matter, and that to do so would violate company policy and cost them
4 their jobs. Indeed, after initially informing us of this fact, a number of PCMs cut off further
5 communications with Plaintiffs' counsel.

6 61. If this case were to go to trial as a class and representative PAGA action, Class
7 Counsel estimates that fees and costs would exceed \$1,500,000.00. Indeed, if a class is not
8 certified, leaving only the single year of PAGA claims to be litigated in this action, attorneys'
9 fees and costs would likely exceed the damages awarded to the PAGA collective depending
10 on whether the Court follows the *Naranjo* case (which is currently under review) regarding all
11 the derivative claims. Regardless, litigating the class and PAGA claims would require
12 substantial additional preparation and discovery. It would require depositions of experts, the
13 presentation of percipient and expert witnesses at trial, as well as the consideration,
14 preparation, and presentation of voluminous documentary evidence and the preparation and
15 analysis of expert reports. Recovery of the damages and penalties previously referenced
16 would also require complete success and certification of all of Plaintiffs' claims, a
17 questionable feat in light of recent developments in wage and hour and class and collective
18 action law as well as the legal and factual grounds that Defendant has asserted to defend
19 this action.

20 62. Class Counsel is aware of no case pending in any jurisdiction in which similar class
21 claims are asserted on behalf of the PCMs.

22 63. If the Court is inclined at this time to review Legal Access Alameda's ("LAA")
23 qualifications to be designated as the *cy pres* beneficiary of this proposed settlement,
24 submitted herewith as Exhibit 3 is the Declaration of Christina Wiellette, the Director of Legal
25 Access Alameda (formerly the Alameda County Bar Association Volunteer Legal Services
26 Corporation), a California 501(c)3 non-profit corporation, in which Ms. Wiellette provides
27 testimony regarding LAA's qualifications for designation. No attorney at Plaintiffs' firm has
28 any ties to LAA, they have never litigated a case together, no member of Hoyer & Hicks has

1 ever been on that entity's Board of Directors or had any other connection with the
2 organization other than naming them as a *cy pres* beneficiary in this class action settlement.

3 I declare under the penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct. Executed on September 2, 2021, at San Francisco, CA.

5 
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7 Ryan L. Hicks
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1 **PROOF OF SERVICE BY EMAIL**

2 I declare that I am employed in the City and County of San Francisco, State of
3 California. I am over eighteen years of age and not a party to the within entitled cause. My
4 business address is 4 Embarcadero Center, Suite 1400, San Francisco, California 94111.

5 On the date below, I served:

6 **DECLARATION OF RYAN L. HICKS SUPPORTING MOTION FOR: PRELIMINARY**
7 **APPROVAL OF SETTLEMENT AND PROVISIONAL CERTIFICATION OF**
8 **SETTLEMENT CLASS; APPROVING THE NOTICE OF PROPOSED CLASS**
9 **SETTLEMENT, APPOINTING SETTLEMENT ADMINISTRATOR AND SETTING FINAL**
10 **APPROVAL HEARING DATE**

11 to:

12 Marlene Muraco
13 mmuraco@littler.com
14 LITTLER MENDELSON P.C.
15 50 West San Fernando Street, 7th Floor
16 San Jose, CA 95113-2434

17 on:

18 September 2, 2021

19 BY EMAIL: I served the document(s) on the person(s) listed above by emailing them
20 pursuant to the parties' written e-service agreement. I declare under penalty of perjury that
21 the foregoing is true and correct, and that this declaration was executed at San Francisco,
22 California, on the date above.
23
24
25
26
27
28


RYAN L. HICKS

EXHIBIT 1

HOYER & HICKS
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Attorneys for Plaintiffs
MARGARET RIVERA, KAY MANALIGOD,
And CHRISTINE ATENCIO

SUPERIOR COURT OF CALIFORNIA
ALAMEDA COUNTY

MARGARET RIVERA, KAY MANALIGOD,
and CHRISTINE ATENCIO, on behalf of
themselves and all others similarly situated,
all aggrieved employees, and the State of
California,

Plaintiffs,

vs.

HOME CARE ASSISTANCE, INC., HOME
CARE ASSISTANCE OF CALIFORNIA,
LLC, HOME CARE ASSISTANCE, LLC,
HOME CARE ASSISTANCE
MANAGEMENT, LLC, HOME CARE
ASSISTANCE HOLDINGS LLC, and DOES
5-25,

Defendants.

Case No. RG20058229

ASSIGNED FOR ALL PURPOSES TO
HON. FRANK ROESCH
DEPARTMENT 17

CLASS AND REPRESENTATIVE
ACTION

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

Complaint Filed: March 11, 2020

This Class Action Settlement Agreement and Release ("Settlement Agreement" or "Agreement"), is made and entered into by, between, and among Plaintiffs MARGARET RIVERA, KAY MANALIGOD, and CHRISTINE ATENCIO (collectively "Plaintiffs") on behalf of themselves and the Settlement Class (as defined below) and on behalf of the State of California Labor and Workforce Development Agency ("LWDA"), on the one hand, and Defendant HOME CARE ASSISTANCE OF CALIFORNIA, LLC ("HCAC") on the other hand. Plaintiffs and Defendant (collectively, the "Parties") enter into this Agreement to effect a full

1 and final settlement and preclusive judgment resolving all claims brought or that could have
2 been brought against HCAC in *Margaret Rivera, et al. v. Home Care Assistance, Inc. et al.*,
3 Case No. RG20058229 (the “Action”) based on the facts alleged in the Action. This
4 Agreement is intended to fully and finally compromise, resolve, discharge, and settle the
5 Released Claims, as defined and on the terms set forth below, and to the full extent reflected
6 herein.

7 **1. RECITALS**

8 This Agreement is made in consideration of the following facts:

9 1.1. WHEREAS, on March 11, 2020, Plaintiffs MARGARET RIVERA, KAY
10 MANALIGOD, and CHRISTINE ATENCIO filed a putative class action complaint against
11 Home Care Assistance, Inc. in Alameda Superior Court, Case No. RG20058229 asserting
12 various wage-related claims against Home Care Assistance, Inc. arising from its alleged
13 misclassification of its Client Care Managers (“CCMs”) and Staffing Managers (“SMs”) as
14 “exempt” employees, which allegedly resulted in various other wage and hour violations, on
15 behalf of themselves and a proposed class consisting of former and current Home Care
16 Assistance, Inc. employees who held CCM and/or SM positions during the applicable
17 statutory period, and alleging the following five causes of action (1) failure to pay overtime
18 wages, (2) failure to authorize, permit and/or provide off duty meal and rest periods, (3)
19 waiting time penalties, (4) failure to provide accurate wage statements, and (5) unfair and
20 unlawful business practices. On May 15, 2020, Plaintiffs filed a First Amended Complaint,
21 which added a cause of action for (6) violation of the Private Attorneys General Act (“PAGA”)
22 against Home Care Assistance, Inc., and identifying Home Care Assistance of California,
23 LLC, Home Care Assistance, LLC, Home Care Assistance Management, LLC and Home
24 Care Assistance Holdings LLC as DOE Defendants (those entities, along with Home Care
25 Assistance, Inc. are jointly referred to herein as “Defendants” or “HCA”). On August 28, 2020,
26 Plaintiffs filed a Second Amended Complaint adding a claim for PAGA penalties against the
27 four LLC defendants.

1 1.2. WHEREAS, Defendants deny the allegations in the Action; denies that they
2 have engaged in any wrongdoing; deny that any Settlement Class Members were ever
3 misclassified; deny that Plaintiffs' allegations state valid claims; deny that a litigation class
4 could properly be certified in the Action; deny that Plaintiffs' claims could properly be
5 maintained as a PAGA representative action; and state that they are entering into this
6 Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation,
7 and on the express conditions that (a) if for any reason the Settlement is not finalized
8 according to the terms of this Agreement, the Settlement and the documents generated as a
9 result of the Settlement shall not be usable for any purpose in the Action or any arbitration,
10 and (b) this Settlement and the documents generated as a result of the Settlement are not
11 admissible or usable in any other civil or administrative proceeding or arbitration, except to
12 the extent necessary to enforce this Settlement and the orders, judgment and agreements
13 arising from this Settlement;

14 1.3. WHEREAS, a bona fide dispute exists as to whether any amount of wages or
15 penalties are due from Defendants to any Settlement Class Members or to the Labor &
16 Workforce Development Agency ("LWDA");

17 1.4. WHEREAS, while litigating the Action, the Parties engaged in substantial
18 discovery, including document requests and interrogatories propounded by Plaintiffs and to
19 which HCAC responded; document requests propounded by HCAC to which Plaintiffs
20 responded; the depositions of Plaintiffs; and the completion of a *Belair* notice process and
21 interviews of putative class members by both sides;

22 1.5. WHEREAS, in preparation for mediation, the Parties also engaged in informal
23 discovery, exchanging information and reviewing and analyzing extensive data made
24 available by HCAC, which enabled Plaintiffs and the mediator to thoroughly evaluate
25 Plaintiffs' claims and the claims of the putative class, and the likely outcomes, risks and
26 expense of pursuing litigation;

1 1.6. WHEREAS, the Parties attended a mediation session via Zoom with
2 professional mediator Tripper Ortman, where the Parties discussed settlement terms at
3 length with the mediator, before agreeing to the terms of this arm's-length Settlement;

4 1.7. WHEREAS, as a result of the mediation, Plaintiffs and Class Counsel believe
5 that the Settlement provides a favorable recovery for the Settlement Class, based on the
6 claims asserted, the evidence developed, and the damages that might be proven against
7 Defendants in the Action. Plaintiffs and Class Counsel further recognize and acknowledge
8 the expense and length of continued proceedings necessary to prosecute the Action against
9 Defendants through trial and appeals. They also have considered the uncertain outcome and
10 the risk of any litigation, especially in complex litigation such as the Action, as well as the
11 difficulties and delays inherent in any such litigation. They are also mindful of the inherent
12 challenges of proof and the strength of the defenses to the alleged claims, and therefore
13 believe that it is desirable that the Released Claims be fully and finally compromised, settled,
14 and resolved with prejudice as set forth herein, subject to the approval of the Court;

15 1.8. WHEREAS, Plaintiffs and Class Counsel, based on their own independent
16 investigations and evaluations, have examined the benefits to be obtained under the terms
17 of this Settlement Agreement, have considered the claims of the Plaintiffs, the claims of the
18 average Settlement Class Member, the risks associated with the continued prosecution of
19 the Action, and the likelihood of success on the merits of the Action, and believe that, after
20 considering all the circumstances, including the uncertainties surrounding the risk of further
21 litigation and the defenses that Defendants have asserted and could assert, the proposed
22 Settlement set forth in this Agreement is fair, reasonable, adequate, in the best interests of
23 Plaintiffs and the Settlement Class, and confers substantial benefits upon the Settlement
24 Class;

25 1.9. WHEREAS, Plaintiffs warrant and represent that they are affecting this
26 Settlement and executing this Agreement after having received full legal advice as to their
27 respective rights and have had the opportunity to obtain independent counsel to review this
28 Agreement;

1 1.10. WHEREAS, the Parties further agree that the Agreement, the fact of this
2 Settlement, and any of the terms of this Agreement, and any documents filed in connection
3 with the Settlement shall not constitute, or be offered, received, claimed, construed, or
4 deemed as, an admission, finding, or evidence of: (i) any wrongdoing, (ii) any violation of any
5 statute or law, (iii) any liability on the claims or allegations in the Action on the part of any
6 Released Parties, or (iv) the propriety of certifying a litigation class or pursuing representative
7 relief under the PAGA in the Action or any other proceeding; and shall not be used by any
8 person for any purpose whatsoever in any legal proceeding, including but not limited to
9 arbitrations, and/or other civil and/or administrative proceedings, other than a proceeding to
10 enforce the terms of the Agreement. There has been no final determination by any court as
11 to the merits of the claims asserted by Plaintiffs against Defendants, nor has there been any
12 final determination as to whether a class should be certified or whether PAGA representative
13 claims may properly be pursued, other than for settlement purposes only;

14 1.11. WHEREAS, for settlement purposes only, HCAC will stipulate to the
15 certification of class claims that are subject to the certification requirements of California
16 Code of Civil Procedure Section 382. Defendants dispute that certification is proper for the
17 purposes of litigating the class claims proposed in or flowing from the claims asserted in the
18 Action;

19 1.12. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
20 AGREED, by the Plaintiffs for themselves and on behalf of the Settlement Class, and by
21 HCAC that, subject to the approval of the Court, the Action shall be settled, compromised,
22 and dismissed, on the merits and with prejudice, and the Released Claims shall be finally
23 and fully compromised, settled and dismissed as to the Released Parties, in the manner and
24 upon the terms and conditions hereafter set forth in this Agreement.

25 **2. DEFINITIONS**

26 Unless otherwise defined herein, capitalized terms used in this Agreement shall
27 have the meanings set forth below:
28

1 2.1 “Class Counsel” means Hoyer & Hicks, including individual attorneys Richard
2 A. Hoyer and Ryan L. Hicks.

3 2.2 “Class Counsel Award” means (i) the attorneys’ fees for Class Counsel’s
4 litigation and resolution of the Action, and all claims resolved by this Settlement, as awarded
5 by the Court, which may not exceed one-third (1/3) of the Total Settlement Amount plus (ii)
6 all expenses and costs incurred by Class Counsel in litigation and resolution of the Action,
7 and all claims resolved by this Settlement, as awarded by the Court.

8 2.3 “Class Information” means information regarding Settlement Class Members
9 that HCAC will in good faith compile from its records and provide to the Settlement
10 Administrator. Class Information shall be provided in a Microsoft Excel spreadsheet and shall
11 include, if possible, for each Settlement Class Member: full name, last-known telephone
12 number, Social Security Number, number of Qualifying Workweeks (during the entire Class
13 Period and also during the PAGA Period, where applicable) and last known address, and in
14 the case of Settlement Class Members who executed an Individual Release on or after March
15 11, 2019 the date of the Release and the payment therefrom. Because Settlement Class
16 Members’ private information is included in the Class Information, the Settlement
17 Administrator shall maintain the Class Information in confidence and shall use and disclose
18 Class Information only for purposes of this Settlement and for no other purpose; access shall
19 be limited to the Settlement Administrator personnel with a need to use the Class Information
20 as part of the administration of the Settlement.

21 2.4 “Class Notice” means the notice of class action settlement to be provided to
22 Settlement Class Members, without material variation from the relevant portion of Exhibit 1.

23 2.5 “Court” means Alameda County Superior Court.

24 2.6 “Effective Date” means the first day after the latter of: (a) 60 days after the Court
25 grants Final Approval of the Agreement if no timely appeal is filed; (b) in the event of an timely
26 appeal filed by a Settlement Class Member, the date of final dismissal of any appeal from the
27 Final Order and Final Judgment or the final dismissal of any proceeding on certiorari to review
28 the Final Order and Final Judgment.

1 2.7 “Exclusion/Objection Deadline” means the final date by which a Settlement
2 Class Member may either (i) submit an objection to any aspect of the Settlement, or (ii)
3 request to be excluded from the Settlement (also known as “opting out” of the Settlement).
4 The Exclusion/Objection Deadline shall be forty-five (45) days after the Notice Date, and shall
5 be specifically identified and set forth in the Preliminary Approval Order and the Class Notice.

6 2.8 “Final Approval” means the Court’s entry of a Final Approval order finally
7 approving this Settlement.

8 2.9 “Final Approval Hearing” means the hearing at or after which the Court will
9 make a final decision as to whether the Settlement is fair, reasonable, and adequate, and
10 therefore, finally approved by the Court.

11 2.10 “Individual PAGA Payment” means the amount payable from the PAGA
12 Settlement Amount to each Settlement Class Member. The Individual PAGA Payment shall
13 be calculated pursuant to Section 5 herein.

14 2.11 “Individual Settlement Payment” means the amount payable from the Net
15 Settlement Fund to each Participating Class Member. The Individual Settlement Payment
16 shall be calculated pursuant to Section 5 herein.

17 2.12 “Individual Release” means any agreement entered into between the Released
18 Parties and Settlement Class Members that released, waived, or relinquished for
19 consideration any of the claims that would be covered by the Participating Class Members’
20 Released Claims as defined in Paragraph 2.25.

21 2.13 “Judgment” means the judgment to be entered in the Action on Final Approval
22 of this Settlement.

23 2.14 “Legally Authorized Representatives” means an administrator/administratrix,
24 personal representative, or executor/executrix of a deceased Settlement Class Member’s
25 estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member;
26 or any other legally appointed person responsible for handling the business affairs of a
27 Settlement Class Member.

1 2.15 “Named Plaintiffs’ General Released Claims” means any and all past, present,
2 and future claims, actions, demands, causes of action, suits, debts, obligations, damages,
3 rights or liabilities, of any nature and description whatsoever, known or unknown, existing or
4 potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of
5 recovery (including but not limited to those based in contract or tort, common law or equity,
6 federal, state, or local law, statute, ordinance, or regulation), and for claims for compensatory,
7 consequential, punitive or exemplary damages, statutory damages, penalties, interest,
8 attorneys’ fees, costs or disbursements, against the Released Parties, including unknown
9 claims covered by California Civil Code section 1542, as quoted below in Paragraph 9.4, by
10 the Plaintiffs, arising during the period from the beginning of the Plaintiffs’ first interaction with
11 any Defendant to the date on which the Court enters the order of Final Approval of this
12 Settlement, for any type of relief that can be released as a matter of law, including, without
13 limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting
14 time penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation
15 costs, restitution, or injunctive, declaratory or equitable relief with the exception of any claims
16 which cannot be released as a matter of law. Plaintiffs will generally release all known and
17 unknown claims against Defendants, and waive the application of section 1542 of the
18 California Civil Code. The claims released pursuant to this paragraph include but are not
19 limited to the Participating Class Members’ Released Claims, as well as any other claims
20 under any provision of the Fair Labor Standards Act, the California Labor Code, the California
21 Code of Regulations, or any applicable California Industrial Welfare Commission Wage
22 Order(s), and claims under state or federal discrimination statutes, including, without
23 limitation the California Fair Employment and Housing Act, California Government Code
24 section 12940 et seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42
25 U.S.C. § 2000 et seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the
26 Age Discrimination in Employment Act of 1967, as amended; the Employee Retirement
27 Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; and all of their implementing
28 regulations and interpretive guidelines.

1 2.16 “Net Settlement Fund” means the portion of the Total Settlement Amount to be
2 distributed to Settlement Class members after the payment by the Settlement Administrator
3 of the Class Counsel award, Settlement Administrator Expenses, PAGA Settlement Amount,
4 and Service Awards.

5 2.17 “Notice Date” means the date of the initial distribution of the Class Notice to
6 Settlement Class Members, as set forth in Section 6.

7 2.18 “Opt Out List” means the Court-approved list of all persons who timely and
8 properly request exclusion from the Settlement Class.

9 2.19 “PAGA Claims” means the Plaintiffs’ representative claims seeking penalties
10 pursuant to PAGA, as alleged in the Complaint to the fullest extent permitted by law.

11 2.20 “PAGA Settlement Amount” means a total payment of \$15,000 to settle all
12 claims under the PAGA. From this amount, 75% will be paid to the LWDA for civil penalties
13 pursuant to the PAGA and 25% (\$3,750) will be distributed *pro rata* to the Settlement Class
14 Members who worked during the PAGA Period (regardless of whether they opt out of this
15 Settlement) and considered penalties for tax reporting purposes.

16 2.21 “PAGA Period” is the time period from March 11, 2019 through the date of
17 Preliminary Approval.

18 2.22 “PAGA-Period Releasee” means any Settlement Class Member who entered
19 into a settlement or release of any of the claims covered by this Settlement between March
20 11, 2019 and March 10, 2020.

21 2.23 “PAGA Workweek” is any calendar week during the PAGA Period in which the
22 Settlement Class Member was actively employed as a CCM and/or SM.

23 2.24 “Participating Class Members” are those Settlement Class Members whose
24 names do not appear on the Opt-Out List.

25 2.25 “Participating Class Members’ Released Claims” means all claims under state,
26 federal and local law arising out of the allegations made in the Action, and that reasonably
27 arise or could have arisen out of the facts alleged in the Action as to all Class Members during
28 the time they worked for Defendant as a non-lead CCM and/or SM within California, including

1 California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3,
2 226.7, 256, 500, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
3 2698, 2699, 2699.3, 2699.5, 2926, 2927, California Industrial Commission Wage Orders, Cal.
4 Code Regs., tit. 8, section 11040, *et seq.*, Business and Professions Code section 17200, *et*
5 *seq.*, and all class claims, representative claims, aggrieved employee claims, meal or rest
6 periods, meal or rest period premiums, unpaid wages, overtime, double time, minimum
7 wages, regular rate of pay, timely and complete payment of wages at separation, failure to
8 provide accurate and itemized wage statements, failure to maintain accurate payroll records,
9 unfair competition, unfair business practices, unlawful business practices, fraudulent
10 business practices, PAGA penalties, waiting-time penalties, civil penalties, penalties of any
11 nature, interest, fees, costs, failure to pay additional 401(k) or employee stock option plan
12 benefits and/or deferred compensation benefits and/or matching benefits for payments
13 received under the Settlement, and any other claims alleged in the Action through the
14 Release Period.

15 2.26 "Plaintiffs" means Margaret Rivera, Kay Manaligod, and Christine Atencio.

16 2.27 "Plan of Allocation" means the plan for allocating the Total Settlement Amount
17 between and among Settlement Class Members as approved by the Court.

18 2.28 "Post-Filing Releasee" means any Settlement Class Member who entered into
19 a settlement or release of any of the claims covered by this Settlement between March 11,
20 2020 and the date of Preliminary Approval.

21 2.29 "Preliminary Approval Date" means the date that the Court enters the
22 Preliminary Approval Order and thus: (i) preliminarily approves the Settlement, and the
23 exhibit(s) thereto, and (ii) enters an order providing for notice to the Settlement Class, an
24 opportunity to opt out of the Settlement Class, an opportunity to submit timely and proper
25 objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement,
26 including approval of the Class Counsel Award.

27 2.30 "Preliminary Approval Order" means the order that Plaintiffs and HCAC will
28 seek from the Court granting preliminary approval to the Settlement Agreement. Entry of the

1 Preliminary Approval Order shall constitute preliminary approval of the Settlement
2 Agreement.

3 2.31 “Qualifying Workweek” is any calendar week during the Class Period in which
4 the Settlement Class Member was actively employed as a CCM and/or SM.

5 2.32 “Release Period” means March 11, 2016 through sixty days after the
6 Preliminary Approval Date.

7 2.33 “Released Claims” means (i) Participating Class Members’ Released Claims
8 and (ii) Named Plaintiffs’ General Released Claims.

9 2.34 “Released Parties” means (i) Defendant HCAC, (ii) HCAC’s past, present, and
10 future parents, subsidiaries and affiliates including without limitation any corporation, limited
11 liability company, partnership, trust, foundation and non-profit entity which controls, is
12 controlled by, or is under common control with HCAC; (iii) the other corporate Defendants in
13 this matter – Home Care Assistance, Inc., Home Care Assistance, LLC, Home Care
14 Assistance Management, LLC, and Home Care Assistance Holdings, LLC, (iv) the past and
15 present shareholders, directors, officers, agents, employees, members, consultants, benefit
16 plans, successor and assigns of any of the foregoing; and (v) any individual or entity that
17 could be jointly liable with any of the foregoing.

18 2.35 “Service Award” means the amount approved by the Court to be paid to each
19 Plaintiff, in addition to their respective Individual Settlement Payment, in recognition of their
20 efforts in coming forward as named plaintiffs and as consideration for a full, general, and
21 comprehensive release of the Named Plaintiffs’ General Released Claims. The Service
22 Award amount payable to Plaintiffs is not to exceed \$15,000, for each of the three individuals,
23 for a total of \$45,000.

24 2.36 “Settlement” means the settlement of the Action between and among Plaintiffs
25 and HCAC, as set forth in this Settlement Agreement.

26 2.37 “Settlement Administrator” means the administrator mutually agreed upon by
27 the Parties and subsequently approved and/or designated by the Court. If the Parties cannot
28

1 agree upon a Settlement Administrator, the Court shall choose between competing proposals
2 made by the Parties.

3 2.38 "Settlement Administrator Expenses" means the amount to be paid to the
4 Settlement Administrator exclusively from the Total Settlement Amount, including the total
5 costs, expenses, and fees of the Settlement Administrator. The amount will be based on a
6 "not-to-exceed" quote for settlement administration. If the Settlement Administrator's
7 expenses are less than the quoted amount, the balance of such funds shall be included in
8 the amount to be distributed to the Settlement Class pursuant to paragraph 10.2.5.

9 2.39 "Settlement Class" means all individuals who were employed by HCAC in
10 California in the position of non-Lead Client Care Manager or non-Lead Staffing Manager or
11 a combination of both positions from March 11, 2016 through the date of Preliminary
12 Approval. The Settlement Class does not include any person who settled or released any of
13 the claims covered by this Settlement prior to March 11, 2019, or any other person who
14 previously was paid or received awards through civil or administrative actions for the claims
15 covered by this Settlement.

16 2.40 "Settlement Class Member" means any member of the Settlement Class.

17 2.41 "Settlement Class Period" means March 11, 2016, through the Preliminary
18 Approval Date.

19 2.42 "Total Settlement Amount" means Two Million Two-Hundred-Fifty Thousand
20 dollars (\$2,250,000) for payment of all claims, which is the maximum amount that HCAC is
21 obligated to pay under this Settlement Agreement under any circumstances (except if the
22 escalator provision of Paragraph 11.2 is triggered) in order to resolve and settle the Action,
23 subject to Court approval. The Total Settlement Amount includes all costs and fees,
24 including, but not limited to, the Class Counsel Award, Settlement Administrator Expenses,
25 escrow costs and expenses, Service Award, PAGA Settlement Amount, interest, and
26 employee payroll taxes.

27 2.43 "Void Date" means the date by which any checks issued to Settlement Class
28 Members shall become void, i.e. on the 91st day after mailing.

1 **3. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE**
2 **COURT FOR PRELIMINARY AND FINAL APPROVAL**

3 3.1 Upon execution of this Settlement Agreement, the Plaintiffs shall submit to the
4 Court a motion for preliminary approval of the Settlement. The motion for preliminary
5 approval shall include a proposed plan for sending the Class Notice to Settlement Class
6 Members within twenty-eight (28) days after the Preliminary Approval Date (the Notice Date),
7 and establishing a period of forty-five (45) days from the Notice Date within which any
8 Settlement Class Member may (i) request exclusion from the Settlement Class, (ii) object to
9 the proposed Settlement, or (iii) object to Class Counsel's request for the Class Counsel
10 Award and for the Service Award to the Plaintiff (the Exclusion/Objection Deadline).

11 3.2 The Parties stipulate to certification under California Code of Civil Procedure
12 Section 382, for settlement purposes only, of the Settlement Class, excluding the Settlement
13 Class's PAGA Claims. The Parties agree that this stipulation shall not be admissible in, and
14 may not be used by any person for any purpose whatsoever in any legal proceeding,
15 including but not limited to any arbitrations and/or any civil and/or administrative proceedings,
16 other than a proceeding to enforce the terms of the Agreement, as further set forth in this
17 Agreement.

18 3.3 The Parties stipulate to the form of, and agree to submit to the Court for its
19 consideration this Settlement Agreement, and the following Exhibit to this Settlement
20 Agreement: Class Notice (Exhibit 1).

21 3.4 Solely for purposes of implementing this Agreement and effectuating the
22 proposed Settlement, the Parties agree and stipulate that:

23 3.4.1 The Court may enter the Preliminary Approval Order, preliminarily
24 approving the Settlement and this Agreement. Among other things, the Preliminary
25 Approval Order shall grant leave to preliminarily certify the Settlement Class for
26 settlement purposes only; approve the Plaintiffs as class representatives, appoint
27 Class Counsel to represent the Settlement Class, and appoint the Settlement
28 Administrator; approve the Class Notice, and the class notice plan embodied in the

1 Settlement Agreement, and approve them as consistent with California Rules of Court
2 3.766(d) and 3.769(f) and due process; set out the requirements for disputing the
3 information upon which Settlement Class Members' share of the Settlement will be
4 calculated, objecting to the Settlement, excluding Settlement Class Members who
5 timely and properly request to be excluded from the Settlement Class, all as provided
6 in this Agreement; and provide that certification and all actions associated with
7 certification are undertaken on the condition that the certification and other actions
8 shall be automatically vacated and of no force or evidentiary effect if this Agreement
9 is terminated or disapproved, as provided in this Agreement.

10 3.5 Class Counsel will submit to the LWDA all papers filed by Plaintiffs relating to
11 the preliminary approval of this Agreement within two (2) days of the filing of that motion.

12 3.6 At the Final Approval Hearing, the Plaintiffs shall request entry of a Final
13 Approval order and a Judgment, to be agreed upon by the Parties, the entry of which is a
14 material condition of this Settlement and that, among other things:

15 3.6.1 Finally approves the Settlement as fair, reasonable, and adequate and
16 directs its consummation pursuant to the terms of the Settlement Agreement;

17 3.6.2 Finds that Class Counsel and Plaintiffs adequately represented the
18 Settlement Class for the purpose of entering into and implementing the Agreement;

19 3.6.3 Re-confirms the appointment of the Settlement Administrator and finds
20 that the Settlement Administrator has fulfilled its duties under the Settlement to date;

21 3.6.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
22 constituted notice that was reasonably calculated, under the circumstances, to apprise
23 Settlement Class Members of the pendency of the Action, and their right to exclude
24 themselves from or object to the proposed settlement and to appear at the Final
25 Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient
26 notice to all persons entitled to receive notice; and (iv) met all applicable requirements
27 of California Rules of Court 3.766(d) and 3.769(f), due process, and any other
28 applicable rules or law;

1 3.6.5 Approves the Opt-Out List and determines that the Opt-Out List is a
2 complete list of all Settlement Class Members who have timely and properly requested
3 exclusion from the Settlement Class and, accordingly, shall neither share in nor be
4 bound by the Final Approval order and Judgment except to the extent that they will
5 receive a payment from the PAGA allocation if they were employed as a CCM and/or
6 SM during the PAGA Period;

7 3.6.6 Directs that the Final Approval order and Judgment of dismissal shall be
8 final and entered forthwith;

9 3.6.7 Without affecting the finality of the Final Approval order and Judgment,
10 directs that the Court retains continuing jurisdiction over the Plaintiffs, the Settlement
11 Class, and HCAC as to all matters concerning the administration, consummation, and
12 enforcement of this Settlement Agreement;

13 3.6.8 Adjudges that, as of the Final Approval Date, the Plaintiffs, and all
14 Settlement Class Members who have not been excluded from the Settlement Class
15 as provided in the Opt-Out List approved by the Court, and their Legally Authorized
16 Representatives, heirs, estates, trustees, executors, administrators, principals,
17 beneficiaries, representatives, agents, assigns, and successors, and/or anyone
18 claiming through them or acting or purporting to act for them or on their behalf,
19 regardless of whether they have received actual notice of the proposed Settlement,
20 have conclusively compromised, settled, discharged, and released the Named
21 Plaintiffs' General Released Claims (in the case of the Plaintiffs) and Participating
22 Class Members' Released Claims (in the case of the Participating Class Members)
23 against HCAC and the Released Parties, and are bound by the provisions of this
24 Agreement;

25 3.6.9 Affirms that, notwithstanding the submission of a timely and proper
26 request for exclusion, Settlement Class Members will still be bound by the settlement
27 and release of the PAGA Claims or remedies under the Final Judgment pursuant to
28 *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) as requests for exclusion do not apply

1 to the PAGA Claims (and hence will receive a payment from the PAGA Settlement
2 Amount), and further affirms that the LWDA's claims for civil penalties pursuant to
3 PAGA for violations of the Released Claims are also extinguished;

4 3.6.10 Declares this Agreement and the Final Approval order and Judgment to
5 be binding on, and have res judicata and preclusive effect as to all pending and future
6 lawsuits or other proceedings: (i) that encompass the Named Plaintiffs' General
7 Released Claims and that are maintained by or on behalf of the Plaintiffs' and/or their
8 Legally Authorized Representatives, heirs, estates, trustees, executors,
9 administrators, principals, beneficiaries, representatives, agents, assigns, and
10 successors, and/or anyone claiming through them or acting or purporting to act for
11 them or on their behalf, and (ii) that encompass the Participating Class Members'
12 Released Claims and that are maintained by or on behalf of any Participating Class
13 Member and/or his or her Legally Authorized Representatives, heirs, estates, trustees,
14 executors, administrators, principals, beneficiaries, representatives, agents, assigns,
15 and successors, and/or anyone claiming through them or acting or purporting to act
16 for them or on their behalf, regardless of whether the Settlement Class Member
17 previously initiated or subsequently initiates individual litigation or other proceedings
18 encompassed by the Participating Class Members' Released Claims, and even if such
19 Settlement Class Member never received actual notice of the Action or this proposed
20 Settlement;

21 3.6.11 Determines that the Agreement and the Settlement provided for herein,
22 and any proceedings taken pursuant thereto, are not, and should not in any event be
23 offered, received, or construed as evidence of, a presumption, concession, or an
24 admission by any party of liability or non-liability or of the certifiability or non-
25 certifiability of a litigation class, or that PAGA representative claims may validly be
26 pursued, or of any misrepresentation or omission in any statement or written document
27 approved or made by any Party; provided, however, that reference may be made to
28 this Agreement and the Settlement provided for herein in such proceedings as may

1 be necessary to effectuate the provisions of this Agreement, as further set forth in this
2 Agreement;

3 3.6.12 Orders that the preliminary approval of the Settlement, certification of
4 the Settlement Class and final approval of the proposed Settlement, and all actions
5 associated with them, are undertaken on the condition that they shall be vacated if the
6 Settlement Agreement is terminated or disapproved in whole or in part by the Court,
7 or any appellate court and/or other court of review, in which event the Agreement and
8 the fact that it was entered into shall not be offered, received, or construed as an
9 admission or as evidence for any purpose, including but not limited to an admission
10 by any Party of liability or non-liability or of any misrepresentation or omission in any
11 statement or written document approved or made by any Party, or of the certifiability
12 of a litigation class or the appropriateness of maintaining a PAGA representative
13 action, as further provided in this Settlement Agreement;

14 3.6.13 Authorizes the Parties, without further approval from the Court, to agree
15 to and adopt such amendments, modifications, and expansions of this Agreement,
16 including all Exhibits hereto, as (i) shall be consistent in all material respects with the
17 Final Approval order and (ii) do not limit the rights of Settlement Class Members; and

18 3.6.14 Contains such other and further provisions consistent with the terms of
19 this Settlement Agreement to which the Parties expressly consent in writing.

20 3.7 At the Final Approval Hearing and as a part of the final approval of this
21 Settlement, Class Counsel will also request approval of the Plan of Allocation set forth in
22 Section V. Any modification to the Plan of Allocation by the Court shall not (i) affect the
23 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
24 terminate the Settlement Agreement, or (iii) impose any obligation on the Defendants or any
25 Released Party to increase the consideration paid in connection with the Settlement (apart
26 from the escalator provision at Paragraph 11.2 of this Settlement, if triggered).

27 3.8 At the Final Approval Hearing, Class Counsel may also request entry of an
28 Order approving the Class Counsel Award and the Service Award to the Plaintiffs, which shall

1 be paid exclusively from the Total Settlement Amount and in accordance with the distribution
2 plan described in Section 5. In no event shall any Released Party otherwise be obligated to
3 pay for any attorneys' fees and expenses or Service Award. The disposition of Class
4 Counsel's application for a Class Counsel Award, and for the Service Award, is within the
5 sound discretion of the Court and is not a material term of this Settlement Agreement, and it
6 is not a condition of this Settlement Agreement that such application be granted. Any
7 disapproval or modification of such application by the Court shall not (i) affect the
8 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
9 terminate the Settlement Agreement, or (iii) increase the consideration Defendants or any
10 Released Party pays in connection with the Settlement. Released Parties shall have no
11 liability to Class Counsel arising from any claim regarding the division of the Class Counsel
12 Award between and among Class Counsel or any other counsel representing Plaintiffs or the
13 Settlement Class Members.

14 3.9 In no event shall HCAC or any Released Party be obligated to pay Settlement
15 Administration Expenses beyond those provided for in this Agreement.

16 3.10 Within 10 days after entry of Judgment, Class Counsel will submit a copy of the
17 Judgment to the LWDA.

18 **4. SETTLEMENT CONSIDERATION**

19 4.1 The total consideration for the Settlement from HCAC is the Total Settlement
20 Amount (\$2,250,000). This is an "all in" number that includes, without limitation, all monetary
21 benefits and payments to the Settlement Class, Service Award, Class Counsel Award,
22 Settlement Administrator Expenses and the PAGA Settlement Amount, and all claims for
23 interest, fees, and costs. Except as set forth in this paragraph 4.1, under no circumstances
24 shall HCAC be required to pay anything more than the Total Settlement Amount, unless the
25 escalator provision at Paragraph 11.2 is triggered. In no event shall HCAC be liable for
26 making any payments under this Settlement, or for providing any relief to Settlement Class
27 Members, before the deadlines set forth in this Agreement. The Parties agree that the entire
28 amount of the Net Settlement Fund, less the employee's share of applicable payroll taxes,

1 shall be distributed to Participating Class Members. HCAC will be separately responsible for
2 the employer's share of payroll taxes, which is not included within the Total Settlement
3 Amount.

4 4.2 The Plaintiffs and all Participating Class Members expressly acknowledge that
5 the Individual Settlement Payment they receive shall be characterized as follows: i) one-third
6 (1/3) of such payments shall be considered non-wage alleged unpaid penalties for which an
7 IRS Form 1099 will be issued, if required; ii) one-third (1/3) shall be considered non-wage
8 alleged unpaid interest for which an IRS Form 1099 will be issued, if required; and iii) one-
9 third (1/3) shall be considered wages for which an IRS Form W-2 shall be issued. Individual
10 PAGA Payments made to Settlement Class Members will be designated as alleged unpaid
11 penalties in their entirety, for which an IRS Form 1099 will be issued, if required.

12 4.3 HCAC agrees not to oppose a request for the Service Award for Plaintiffs, as
13 awarded by the Court, up to a maximum of \$15,500 for each named Plaintiff. The Plaintiff
14 and Class Counsel agree not to seek a Service Award in excess of the above amount.

15 4.4 Class Counsel agrees not to seek an award of attorneys' fees, costs and
16 expenses from the Court in excess of one third (1/3) of the Total Settlement Amount plus
17 reasonable costs incurred. HCAC agrees not to oppose a request for attorneys' fees for up
18 to one third (1/3) of the Total Settlement Amount, plus reasonable costs. Any amount
19 awarded as the Class Counsel Award shall be inclusive of any and all amounts due to or
20 claimed by any and all counsel representing Plaintiffs. Released Parties and Settlement
21 Class Members shall have no obligation regarding or liability for allocation or payment of the
22 Class Counsel Award.

23 4.5 The Settlement Administrator shall pay the Class Counsel Award by check, wire
24 transfer, or other method agreed upon by Class Counsel, payable to "Hoyer & Hicks." Class
25 Counsel shall provide the Settlement Administrator notice of receipt of the Class Counsel
26 Award. Released Parties shall have no liability to Class Counsel or any other counsel for
27 Plaintiffs or any Settlement Class Member arising from any claim regarding the division of
28 the Class Counsel Award.

1 **5. FUNDING AND ALLOCATION OF THE SETTLEMENT**

2 5.1 Within fourteen (14) calendar days of the Effective Date, HCAC shall provide
3 the Total Settlement Amount (\$2,250,000) to the Settlement Administrator.

4 5.2 Within seven (7) calendar days of receipt of the Total Settlement Amount from
5 HCA, the Settlement Administrator will effectuate the payments of the Class Counsel Award,
6 the PAGA Payment, the Service Awards, the Settlement Administrator Expenses, and all of
7 the payments to Settlement Class Members.

8 5.3 Participating Class Members are eligible to receive both an Individual
9 Settlement Payment and an Individual PAGA Payment. Settlement Class Members whose
10 names appear on the Opt-Out List are only eligible to receive an Individual PAGA Payment
11 (if they worked any PAGA Workweeks). Each Participating Class Member's Individual
12 Settlement Payment will be distributed from the Net Settlement Fund and calculated in
13 proportion to HCAC's best estimate of each Participating Class Member's total weeks actively
14 employed during the Settlement Class Period (see Paragraph 2.35 above) as a non-Lead
15 CCM and/or non-Lead SM for HCAC in California, as determined from the Class Information
16 provided to the Settlement Administrator by HCAC. Class Counsel will be permitted to review
17 and approve the calculation of settlement funds to be distributed.

18 5.4 In order to account for Participating Class Members who are also Post-Filing
19 Releasees, Post-Filing Releasees will receive an Individual PAGA Payment plus an
20 Individual Settlement Payment that reflects the difference between what the individual's
21 payment would have been but for the prior settlement agreement/release and the gross
22 payment the individual received as a result of signing the Post-Filing Release. For the
23 avoidance of doubt, if a Post-Filing Releasee was paid \$5,000 in exchange for a severance
24 agreement, his or her Individual Settlement Payment under this agreement will be \$5,000
25 less than it would have been in the absence of the prior severance agreement. The amount
26 of the offset (i.e. \$5,000 in the example) will be distributed among those Participating Class
27 Members who are not Post-Filing Releasees. Any Participating Class Member for whom the
28 calculation described in this paragraph results in a \$0 or negative Individual Settlement

1 Payment will receive no Individual Settlement Payment, but will nonetheless be bound by the
2 Participating Class Member Release.

3 5.5 Individual PAGA Payments from the 25% of the PAGA Settlement Amount will
4 be made to all Settlement Class Members who worked any PAGA Workweeks. The amount
5 of each Individual PAGA Payment will be calculated in proportion to HCAC's best estimate
6 of each Settlement Class Member's total PAGA Workweeks worked as compared to the total
7 number of PAGA Workweeks worked by all Settlement Class Members.

8 5.6 Following the first distribution of the Individual Settlement Payments to
9 Settlement Class Members, all funds not claimed prior to the Void Date (i.e. all funds from
10 uncashed checks) will be distributed to the cy pres beneficiary of the Settlement as described
11 in paragraph 10.3.

12 5.7 As described in Section 6, each Settlement Class Member will have the
13 opportunity, should he or she disagree with HCAC's calculation of his or her work weeks, to
14 provide documentation to establish the appropriate number. There will be a presumption that
15 HCAC's records are correct, absent evidence produced by a Settlement Class Member to
16 the contrary.

17 5.8 The Settlement Administrator shall issue an Individual Settlement Payment to
18 each Participating Class Member, and an Individual PAGA Payment to each Settlement
19 Class Member who worked any PAGA Workweeks. The Individual Settlement Payments
20 shall be reported by the Settlement Administrator to the applicable governmental authorities
21 on IRS Forms 1099 and W-2. The portions allocated to Plaintiffs' Service Award shall be
22 reported on IRS Form 1099 by the Settlement Administrator. The Individual PAGA Payments
23 shall be reported by the Settlement Administrator to the applicable government authorities
24 on IRS Form 1099. The Settlement Administrator shall be responsible for issuing copies of
25 IRS Form W-2 and 1099 for the Plaintiffs and Settlement Class Members.

1 **6. CLASS NOTICE PROCEDURES**

2 6.1 No more than fourteen (14) calendar days after entry of the Preliminary
3 Approval Order, HCAC shall provide the Settlement Administrator with the Class Information
4 for purposes of sending the Class Notice to Settlement Class Members.

5 6.2 The Class Notice will include a statement to each Settlement Class Member
6 containing his or her total Qualifying Workweeks being used to calculate the amount of his
7 or her Settlement Payment as described in Paragraphs 5.3 and 5.4, and inform Settlement
8 Class Members of their right to request exclusion from the Settlement, of their right to object
9 to the Settlement, of their right to dispute the information upon which their share of the
10 Settlement will be calculated, and the claims to be released.

11 6.3 As set forth in the Class Notice, Settlement Class Members will be provided
12 forty-five (45) days after their receipt of the Class Notice and accompanying statement to
13 disagree with HCAC's calculation of his or her total Qualifying Workweeks by providing
14 documentation to the Settlement Administrator to show contrary information. The Settlement
15 Administrator shall review any documentation submitted by a Settlement Class Member and
16 consult with the Parties to determine whether an adjustment is warranted. The Settlement
17 Administrator's determination of the amount of any Settlement Class Member's Qualifying
18 Workweeks shall be binding upon the Settlement Class Member and the Parties, and the
19 Settlement Class Members Individual Settlement Payment will be calculated according to the
20 Settlement Administrator's determination. There will be a presumption that HCAC's records
21 are correct, absent evidence produced by a Settlement Class Member to the contrary.

22 6.4 No more than twenty-eight (28) days after entry of the Preliminary Approval
23 Order, provided HCAC timely complied with its obligation in Paragraph 6.1, the Settlement
24 Administrator shall send a copy of the Class Notice by first-class mail to each Settlement
25 Class Member (the Notice Date).

26 6.5 If any Class Notice sent to any potential Settlement Class Member via first-
27 class mail is returned to the Settlement Administrator with a forwarding address, the
28 Settlement Administrator shall forward the postal mailing to that address. For any remaining

1 returned postal mailings, the Settlement Administrator shall make a good-faith search of an
2 appropriate database, as described in Paragraph 6.6, and postal mailings shall be forwarded
3 to any new postal mail address obtained through such a search within five (5) calendar days
4 of receipt. In the event that any Class Notice is returned as undeliverable a second time, no
5 further postal mailing shall be required. The Settlement Administrator shall maintain a log
6 detailing the instances Class Notices are returned as undeliverable.

7 6.6 Before any mailing, the Settlement Administrator shall make a good-faith
8 attempt to obtain the most-current names and postal mail addresses for all potential
9 Settlement Class Members to receive such postal mail, including cross-checking the names
10 and/or postal mail addresses it received from HCAC, as well as any other sources, with
11 appropriate databases and “skip tracing” (e.g., the National Change of Address Database)
12 and performing further reasonable searches (e.g., through Lexis/Nexis) for more-current
13 names and/or postal mail addresses for Settlement Class Members. All Settlement Class
14 Members’ names and postal mail addresses obtained through these sources shall be
15 protected as confidential and not used for purposes other than the notice and administration
16 of this Settlement. The Settlement Administrator shall exercise its best judgment to
17 determine the current mailing address for each Settlement Class Member. The address
18 determined by the Settlement Administrator as the current mailing address shall be presumed
19 to be the best mailing address for each Settlement Class Member.

20 6.7 The number and manner of any reminder to be sent to the Settlement Class
21 Members, beyond that described in Paragraph 6.4, following the initial Class Notice mailing
22 is to be determined by Class Counsel and the Settlement Administrator; *provided* that
23 counsel for HCAC shall be given advance notice of the intention to send out any additional
24 reminder along with the right to provide input to Class Counsel and the Settlement
25 Administrator about the content of same.

26 6.8 The Parties agree that the procedures set forth in this Section constitute
27 reasonable and the best practicable notice under the circumstances and an appropriate and
28

1 sufficient effort to locate current addresses for Settlement Class Members such that no
2 additional efforts to do so shall be required.

3 6.9 The Settlement Administrator will provide Class Notice by, at a minimum, (i)
4 first-class mail notice without material variation from the form attached as the relevant portion
5 of Exhibit 1. The Class Notice shall comply with California Rules of Court 3.766(d), 3.769(f)
6 and due process.

7 6.10 At least twenty-one (21) days before the Final Approval Hearing, the Settlement
8 Administrator shall prepare a declaration of due diligence and proof of dissemination with
9 regard to the mailing of the Class Notice, and any attempts by the Settlement Administrator
10 to locate Settlement Class Members, its receipt of valid requests for exclusion, and its inability
11 to deliver the Class Notice to Settlement Class Members due to invalid addresses (“Due
12 Diligence Declaration”), to Class Counsel and counsel for HCAC for presentation to the
13 Court. Class Counsel shall be responsible for filing the Due Diligence Declaration with the
14 Court.

15 6.11 If any individual whose name does not appear in the Class Information that
16 HCAC provides the Settlement Administrator (and who has not previously opted out of the
17 Settlement Class), believes that he or she is a Settlement Class Member, he or she shall
18 have the opportunity to dispute his or her exclusion from the Settlement Class. If an individual
19 believes he or she is a Settlement Class Member, he or she must notify the Settlement
20 Administrator within 45 days of the Notice Date. The Parties will meet and confer regarding
21 any such individuals in an attempt to reach an agreement as to whether any such individual
22 should be regarded as a Settlement Class Member. If the Parties so agree, the Settlement
23 Administrator will mail a Class Notice to the individual and treat the individual as a Settlement
24 Class Member for all other purposes. Such an individual will have the same rights as any
25 other Settlement Class Member under this Agreement. In the event that the disbursement
26 of the Individual Settlement Payments and/or Individual PAGA Payments has begun (in
27 accordance with this Settlement Agreement) at the time that the Parties agree that such
28 individual should be regarded as a Settlement Class Member and that such individual does

1 not exercise his or her right to opt out of the Settlement, the Individual Settlement Payment
2 and/or Individual PAGA Payment to such individual shall be disbursed from funds remitted
3 back to the Total Settlement Amount (i.e. from settlement checks that remain uncashed
4 beyond the Void Date).

5 6.12 Defendants shall not retaliate in any manner against any Settlement Class
6 Member who participates in the settlement or challenges their Class Member status.

7 **7. PROCEDURES FOR EXCLUSION**

8 7.1 Settlement Class Members (with the exception of the Plaintiffs) may opt out of
9 the Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement
10 Class must submit timely, written requests for exclusion. To be effective, such a request must
11 include the Settlement Class Member’s name, address, last four digits of Social Security
12 Number, and telephone number; a clear and unequivocal statement that the Settlement Class
13 Member wishes to be excluded from the Settlement Class; and the signature of the
14 Settlement Class Member or the Legally Authorized Representative of the Settlement Class
15 Member. The request must be mailed to the Settlement Administrator at the address provided
16 in the Class Notice and must be postmarked no later than the Exclusion/Objection Deadline.
17 The date of the postmark shall be the exclusive means used to determine whether a request
18 for exclusion has been timely submitted. Requests for exclusion must be exercised
19 individually by the Settlement Class Member. Attempted collective group, class, or subclass
20 requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.
21 Individual exclusion requests may be submitted by a Settlement Class Member’s Legally
22 Authorized Representative.

23 7.2 The Settlement Administrator shall promptly log each request for exclusion that
24 it receives and provide copies of the log and all such requests for exclusion to Class Counsel
25 and counsel for HCA, as requested.

26 7.3 The Settlement Administrator shall prepare a list of all persons who timely and
27 properly requested exclusion from the Settlement Class (the Opt-Out List) and shall, before
28

1 the Final Approval Hearing, provide a declaration to Class Counsel attesting to the accuracy
2 of the list. Class Counsel shall submit the declaration to the Court.

3 7.4 All Settlement Class Members who are not included in the Opt-Out List
4 approved by the Court shall be bound by this Agreement, and all their claims shall be
5 dismissed with prejudice and released as provided for herein, even if they never received
6 actual notice of the Action or this proposed Settlement.

7 7.5 The Settlement Administrator, in its sole discretion, shall determine whether a
8 request for exclusion was timely and properly submitted. The Settlement Administrator's
9 decision shall be final, binding, and nonappealable.

10 7.6 The Plaintiffs agree not to request exclusion from the Settlement Class.

11 7.7 Settlement Class Members may object to or opt out of the Settlement, but may
12 not do both. Any Settlement Class Member who submits a timely and proper request for
13 exclusion may not file an objection to the Settlement or receive an Individual Settlement
14 Payment, and shall be deemed to have waived any rights or benefits under the Settlement
15 Agreement, other than the possible right to an Individual PAGA Payment. If a Settlement
16 Class Member files both an objection and a valid and timely request for exclusion, the request
17 for exclusion will override the objection, and the objection shall therefore be ignored.

18 7.8 Notwithstanding the submission of a timely request for exclusion, Settlement
19 Class Members will still be bound by the settlement and release of the PAGA Claims or
20 remedies under the Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969
21 (2009). Requests for exclusion do not apply to the PAGA Claims, and will not be effective to
22 preclude the release of the PAGA Claims, and a Settlement Class Member who opts out of
23 the Settlement will only opt out of class relief, and will still be entitled to a *pro rata* share of
24 the PAGA allocation if they worked any PAGA Workweeks.

25 7.9 No later than ten (10) business days after the Exclusion/Objection Deadline,
26 the Settlement Administrator shall provide to Class Counsel and counsel for HCAC the Opt-
27 Out List together with copies of the opt-out requests. Notwithstanding any other provision of
28 this Settlement Agreement, if (i) more than seven percent (7%) of the total number of

1 Settlement Class Members exercise their right to opt out of the Settlement, or (ii) if any
2 number of Settlement Class Members representing more than seven percent of the total
3 Qualifying Workweeks opts out, HCAC at its sole and absolute discretion may elect to rescind
4 and revoke the entire Settlement Agreement by sending written notice that it revokes the
5 Settlement pursuant to this paragraph to Class Counsel within ten (10) calendar days before
6 the Final Approval Hearing. HCAC agrees to pay all of the Settlement Administration
7 Expenses incurred through such date if it exercises this option.

8 7.10 HCAC shall not retaliate in any manner against any Settlement Class Member
9 who excludes himself or herself from the Settlement.

10 8. PROCEUDRES FOR OBJECTIONS

11 8.1 Any Settlement Class Member that wishes to object to the fairness,
12 reasonableness, or adequacy of this Agreement or the proposed Settlement may provide to
13 the Settlement Administrator (who shall forward it to Class Counsel and counsel for HCAC),
14 a timely statement of the objection.

15 8.2 To be timely, an objection must be mailed to the Settlement Administrator, and
16 postmarked no later than the Exclusion/Objection Deadline. The date of the postmark on the
17 return-mailing envelope shall be the exclusive means used to determine whether objection
18 has been timely submitted.

19 8.3 An objection must contain at least the following: (i) the objector's full name,
20 address, telephone, last four digits of Social Security Number, and signature; (ii) a clear
21 reference to the Action; (iii) a statement of the specific legal and factual basis for each
22 objection argument; and (iv) a statement whether the objecting person or entity intends to
23 appear at the Final Approval Hearing, either in person or through counsel and, if through
24 counsel, a statement identifying that counsel by name, bar number, address, and telephone
25 number. All objections shall be signed by the objecting Settlement Class Member (or his
26 Legally Authorized Representative), even if the Settlement Class Member is represented by
27 counsel.

1 8.4 The right to object to the proposed Settlement must be exercised individually
2 by a Settlement Class Member. Attempted collective, group, class, or subclass objections
3 shall be ineffective and disregarded. Individual objections may be submitted by a Settlement
4 Class Member's Legally Authorized Representative.

5 8.5 Any Settlement Class Member who does not file a timely objection in
6 accordance with this Section may still orally object at the Final Approval Hearing (by following
7 the Court's procedures in effect at that time for making videoconference appearances or by
8 any other method approved by the Court if in person appearances remain prohibited) to the
9 proposed Settlement, the Plan of Allocation, the Class Counsel Award and the Service
10 Award. Settlement Class Members who object to the proposed Settlement shall remain
11 Settlement Class Members, and shall be deemed to have voluntarily waived their right to
12 pursue an independent remedy against HCAC and the Released Parties. As stated in the
13 Class Notice, Class Counsel and/or the Settlement Administrator will provide information
14 regarding how an objector may appear via videoconference, telephone, and/or other means
15 to any Settlement Class Member who requests such information prior to the Final Approval
16 Hearing.

17 8.6 To the extent any Settlement Class Member objects to the proposed
18 Settlement, and such objection is overruled in whole or in part, such Settlement Class
19 Member will be forever bound by the Final Approval order and Judgment.

20 8.7 It shall be Class Counsel's sole responsibility to respond to any objections
21 made with respect to any application for the Class Counsel Award and Service Award.

22 8.8 HCAC shall not retaliate in any manner against any Settlement Class Member
23 who objects to the settlement.

24 **9. RELEASES**

25 9.1 The Released Claims against each and all of the Released Parties shall be
26 released and dismissed with prejudice and on the merits (without an award of costs to any
27 party other than as provided in this Agreement) upon entry of the Final Approval order and
28 Judgment.

1 9.2 As of the Final Approval Date, the Plaintiffs, and all Participating Class
2 Members, individually and on behalf of their Legally Authorized Representatives, heirs,
3 estates, trustees, executors, administrators, representatives, agents, successors, and
4 assigns, and anyone claiming through them or acting or purporting to act on their behalf,
5 agree to forever release, discharge, hold harmless, and covenant not to sue each and all of
6 the Released Parties from each and all of the Named Plaintiffs' General Released Claims (in
7 the case of the Plaintiffs) and the Participating Class Members' Released Claims (in the case
8 of the Participating Class Members), and by operation of the Final Judgment shall have fully
9 and finally released, relinquished, and discharged all such claims against each and all of the
10 Released Parties; and they further agree that they shall not now or hereafter initiate, maintain,
11 or assert any Named Plaintiffs' General Released Claims (in the case of Plaintiffs) and any
12 Participating Class Members' Released Claims (in the case of the Participating Class
13 Members), against the Released Parties in any other court action or before any administrative
14 body, tribunal, arbitration panel, or other adjudicating body. Without in any way limiting the
15 scope of the release described in Paragraphs 2.15 and 2.25, as well as the remainder of this
16 Section, this release covers, without limitation, any and all claims for attorneys' fees, costs or
17 disbursements incurred by Class Counsel or any other counsel representing the Plaintiffs or
18 Settlement Class Members, or by the Plaintiffs or Settlement Class Members, or any of them,
19 in connection with or related in any manner to the Action, the Settlement of the Action, the
20 administration of such Settlement, and/or the Released Claims, except to the extent
21 otherwise specified in the Agreement.

22 9.3 As of the Final Approval Date, the Plaintiffs, and all Participating Class
23 Members, shall be permanently barred and enjoined from initiating, asserting, or prosecuting
24 against the Released Parties in any federal or state court or tribunal any and all Named
25 Plaintiffs' General Released Claims (in the case of Plaintiffs) and any Participating Class
26 Members' Released Claims (in the case of the Participating Class Members, as further
27 provided in Paragraphs 2.15 and 2.25, as well as this Section.
28

1 9.4 The Named Plaintiffs expressly acknowledge that they are familiar with
2 principles of law such as Section 1542 of the California Civil Code, which provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
5 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
6 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

7 9.5 With respect to the Named Plaintiffs' General Released Claims, as described
8 in Paragraph 2.15, Plaintiffs shall be deemed to have expressly, knowingly, and voluntarily
9 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
10 benefits they may otherwise have had pursuant to Section 1542 of the California Civil Code
11 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction
12 that may be applicable herein. In connection with the release, the Plaintiffs acknowledge that
13 they are aware that they may hereafter discover claims presently unknown and unsuspected
14 or facts in addition to or different from those which he now knows or believes to be true with
15 respect to matters released herein. Nevertheless, the Plaintiffs acknowledge that a portion
16 of the consideration received herein is for a release with respect to unknown damages and
17 complaints, whether resulting from known injuries and consequences or from unknown
18 injuries or unknown consequences of known or unknown injuries, and states that it is the
19 intention of the Plaintiffs in agreeing to this release to fully, finally, and forever to settle and
20 release all matters and all claims that exist, hereafter may exist, or might have existed
21 (whether or not previously or currently asserted in any action), constituting Named Plaintiffs'
22 General Released Claims.

23 9.6 Plaintiffs further acknowledge, agree, and understand that: (i) they have read
24 and understand the terms of this Agreement; (ii) they have been advised in writing to consult
25 with an attorney before executing this Agreement; and (iii) they have obtained and considered
26 such legal counsel as they deems necessary.

27 9.7 Subject to Court approval, the Plaintiffs, and all other Participating Class
28 Members, shall be bound by this Settlement Agreement, and all of their claims shall be

1 dismissed with prejudice and released, even if they never received actual notice of the Action
2 or this Settlement.

3 9.8 Subject to Court approval, all Settlement Class Members with one or more
4 PAGA Workweeks shall be deemed to have released any claim for civil penalties under
5 PAGA arising out of the allegations made in the Action, and that reasonably arise or could
6 have arisen out of the facts alleged in the Action for the alleged violation of California Labor
7 Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3, 226.7, 256, 500,
8 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699,
9 2699.3, 2699.5, , 2926, 2927, and California Industrial Commission Wage Orders, Cal. Code
10 Regs., tit. 8, section 11040, *et seq*, with regard to all workweeks during which the Settlement
11 Class Member was employed as a CCM or SM in California during the PAGA Period.

12 **10. ADMINISTRATION OF THE SETTLEMENT FUND**

13 10.1 The Settlement Administrator or its authorized agents in consultation with the
14 Parties and subject to the supervision, direction, and approval of the Court, shall calculate
15 the allocation of and oversee the distribution of the Total Settlement Amount.

16 10.2 The Total Settlement Amount shall be applied as follows:

17 10.2.1 To pay the total costs, expenses, and fees of the Settlement
18 Administrator incurred in connection with providing Class Notice to potential
19 Settlement Class Members, and the management and distribution of the Total
20 Settlement Amount to Settlement Class Members, not to exceed a “not to exceed”
21 quote provided to and agreed upon by the Parties (if the Settlement Administrator’s
22 expenses are less than the quoted amount, the balance of such funds shall be
23 included in the amount to be distributed to the Settlement Class pursuant to paragraph
24 10.2.5.)

25 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiffs’
26 Service Award based on contributions and time expended assisting in the litigation,
27 up to a maximum of \$15,000 to each plaintiff;
28

1 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class
2 Counsel Award (Seven Hundred Fifty Thousand Dollars (\$750,000)), plus reasonable
3 costs incurred as ordered by the Court;

4 10.2.4 Subject to the approval and further order(s) of the Court, to distribute
5 75% of the PAGA Payment to the LWDA and 25% of the PAGA Payment to the
6 Settlement Class Members who worked any PAGA Workweeks as described in
7 Paragraph 5.5 above, with the amount to be distributed to each Settlement Class
8 Member determined proportionately to their PAGA Workweeks worked;

9 10.2.5 After the Effective Date and subject to the approval and further order(s)
10 of the Court, to distribute the Individual Settlement Payments from the Total
11 Settlement Amount for the benefit of the Participating Class Members pursuant to the
12 Plan of Allocation, or as otherwise ordered by the Court.

13 10.3 If after the distribution any portion of the Total Settlement Amount is not
14 successfully redistributed to Settlement Class Members after the Void Date (i.e. checks are
15 not cashed or checks are returned as undeliverable after the distribution), then after the Void
16 Date for redistributed checks, the Settlement Administrator shall void the check and shall
17 direct such unclaimed funds to be paid to the *cy pres* beneficiary of the Settlement as
18 approved by the Court, subject to the requirements of Cal. Code Civ. P. § 384. The parties
19 propose that the Court approve Legal Access Alameda as the *cy pres* beneficiary of this
20 settlement.

21 10.4 Participating Class Members shall be subject to and bound by the provisions of
22 the Settlement Agreement, the releases contained herein, and the Judgment with respect to
23 all Participating Class Members' Released Claims, regardless of whether they obtain any
24 distribution from the Total Settlement Amount.

25 10.5 Payment from the Total Settlement Amount made pursuant to and in the
26 manner set forth herein shall be deemed conclusive of compliance with this Settlement
27 Agreement as to all Settlement Class Members.
28

1 10.6 No Settlement Class Member shall have any claim against the Plaintiffs, Class
2 Counsel, or the Settlement Administrator based on distributions made substantially in
3 accordance with this Settlement Agreement and/or orders of the Court. No Settlement Class
4 Member shall have any claim against any Released Party or its counsel relating to
5 distributions made under this Settlement.

6 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**
7 **OF SETTLEMENT AGREEMENT**

8 11.1 If the Court does not approve the Settlement as set forth in this Settlement
9 Agreement, or does not enter the Final Approval order and Judgment on the terms described
10 herein, or if the Court enters the Judgment and appellate review is sought, and on such
11 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
12 Approval order does not otherwise become Final, then this Settlement Agreement shall be
13 cancelled and terminated, unless all Parties, in their sole discretion no later than thirty (30)
14 days from the date such ruling becomes Final, provide written notice to all other Parties
15 hereto of their intent to proceed with the Settlement under the terms of the Judgment as it
16 may be modified by the Court or any appellate court.

17 11.2 The Parties agree that this Settlement was reached based on a representation
18 of a total of 26,513 Qualifying Workweeks worked between March 11, 2016 and May 13,
19 2021. The Parties agree that if the Class Information provided to the Settlement Administrator
20 reflects an increase in the number of total Qualifying Workweeks that is more than 10%,
21 HCAC shall have the option of: 1) selecting a new end date for the Class Period that limits
22 the number of Qualifying Workweeks in the Class Information to no more than 110% of
23 26,513; or 2) increasing the Net Settlement Amount proportionately (for any amount over
24 10%. For avoidance of doubt, for example, should the total workweeks be 30,490 (*i.e.*, 15%
25 over the number represented), and should HCAC then choose option 2, above, HCAC would
26 be required to increase the Maximum Settlement Amount in a sum derived by the following
27 formula: 5% x Net Settlement Amount.

1 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is modified
2 by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement
3 Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the
4 Parties stipulate and agree the Settlement, this Agreement, the Class Information, the Opt-
5 Out List, and all documents exchanged and filed in connection with the Settlement shall be
6 treated as privileged mediation communications under Cal. Evid. Code §§ 1115 et seq.; (b)
7 the Settlement shall be without force and effect upon the rights of the Parties hereto, and
8 none of its terms shall be effective or enforceable, with the exception of this paragraph, which
9 shall remain effective and enforceable; (c) the Parties shall be deemed to have reverted nunc
10 pro tunc to their respective status prior to execution of this Agreement, and will agree to
11 request a status conference to discuss the status of the case and its schedule; (d) all Orders
12 entered in connection with the Settlement, including the certification of the Settlement Class,
13 shall be vacated without prejudice to any Party's position on the issue of class certification,
14 the issue of amending the complaint, or any other issue, in the Action or any other action,
15 and the Parties shall be restored to their litigation positions existing on the date of execution
16 of this Agreement; and (e) the Parties shall proceed in all respects as if the Settlement
17 Agreement and related documentation and orders had not been executed, and without
18 prejudice in any way from the negotiation or fact of the Settlement or the terms of the
19 Settlement Agreement. The Settlement Agreement, the Settlement, all documents, orders,
20 and evidence relating to the Settlement, the fact of their existence, any of their terms, any
21 other statement or report by the Parties or by others concerning the Settlement Agreement,
22 the Settlement, their existence, or their terms, any negotiations, proceedings, acts performed,
23 or documents executed pursuant to or in furtherance of the Settlement Agreement or the
24 Settlement shall not be admissible in any proceeding, and shall not be offered, received, or
25 construed as evidence of a presumption, concession, or an admission of liability, of
26 unenforceability of any arbitration agreement, of the certifiability of a litigation class, or of any
27 misrepresentation or omission in any statement or written document approved or made, or
28 otherwise used by any Person for any purpose whatsoever, in any trial of the Action or any

1 other action or proceedings. Plaintiff, Class Counsel and the Settlement Administrator shall
2 return to counsel for HCAC all copies of Class Information and Opt-Out Lists and shall not
3 use or disclose the Class Information or Opt-Out List for any purpose or in any proceeding.

4 11.4 HCAC does not agree or consent to certification of the Settlement Class for any
5 purpose other than to effectuate the Settlement of the Action. Further, HCAC does not agree
6 or consent that the Action could properly be maintained as a PAGA representative action for
7 any purpose other than to effectuate the Settlement of the Action. If this Settlement
8 Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not
9 occur, all Orders certifying the Settlement Class or establishing the Action as a PAGA
10 representative action for purposes of effecting this Settlement Agreement, and all preliminary
11 and/or final findings regarding the Settlement Class certification order, shall be automatically
12 vacated upon notice to the Court, the Action shall proceed as though the Settlement Class
13 had never been certified pursuant to this Settlement Agreement, had never been maintained
14 as a PAGA representative action, and such findings had never been made, and the Action
15 shall revert nunc pro tunc to the procedural status quo as of the date and time immediately
16 before the execution of the Settlement Agreement, in accordance with this Settlement
17 Agreement.

18 12. ADDITIONAL PROVISIONS

19 12.1 All of the Exhibits to this Agreement are an integral part of the Settlement and
20 are incorporated by reference as though fully set forth herein.

21 12.2 The Plaintiffs and Class Counsel acknowledge that an adequate factual record
22 has been established that supports the Settlement and, apart from the limited discovery
23 described in the next sentence, hereby waive any right to conduct further discovery to assess
24 or confirm the Settlement. Notwithstanding the prior sentence, the Parties agree to
25 reasonably cooperate with respect to limited confirmatory discovery to be agreed upon
26 related to the last-known addresses of Settlement Class Members or other matters as may
27 be required by the Court in connection with preliminary and/or final approval.
28

1 12.3 Unless otherwise noted, all references to “days” in this Agreement shall be to
2 calendar days. In the event any date or deadline set forth in this Agreement falls on a
3 weekend or federal legal holiday, such date or deadline shall be on the first business day
4 thereafter.

5 12.4 Plaintiffs and Class Counsel will not make any public disclosure of this
6 Settlement or the Confidential Memorandum of Understanding that preceded it, except for
7 the filing of pleadings and declarations with the Court in support of preliminary and final
8 approval of the Settlement.

9 12.5 This Agreement constitutes the full and complete agreement of the Parties
10 hereto, and supersedes all prior negotiations and agreements, whether oral, written or
11 otherwise, and may be amended or modified only by a written instrument signed by counsel
12 for all Parties or the Parties’ successors-in-interest.

13 12.6 The Parties reserve the right, subject to the Court’s approval, to make any
14 reasonable extensions of time that might be necessary to carry out any of the provisions of
15 this Agreement. Such extensions must be in writing to be enforceable.

16 12.7 The Settlement Agreement, the Settlement, the fact of the Settlement’s
17 existence, any of terms of the Settlement Agreement, any other statement or report by the
18 Parties or by others concerning the Settlement Agreement or the Settlement, and any
19 negotiations, proceedings, acts performed, or documents executed pursuant to or in
20 furtherance of the Settlement Agreement or the Settlement: (i) may not be deemed to be,
21 may not be used as, and do not constitute an admission or evidence of the validity of any
22 Released Claims or of any wrongdoing or liability of Defendants; (ii) may not be deemed to
23 be, may not be used as, and do not constitute an admission or evidence of any fault,
24 wrongdoing, or omission by Defendants in any trial, civil, arbitration, criminal, or
25 administrative proceeding of the Action or any other action or proceedings in any court,
26 administrative agency, arbitration or other tribunal; (iii) may not be used as evidence of any
27 waiver of, unenforceability of, or as a defense to any HCAC arbitration agreement; and (iv)
28 may not be used as evidence on any class certification proceeding.

1 12.8 The Released Parties shall have the right to file the Settlement Agreement, the
2 Final Approval order and Judgment, and any other documents or evidence relating to the
3 Settlement in any action that may be brought against them in order to support a defense or
4 counterclaim based on principles of res judicata, collateral estoppel, release, good-faith
5 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue
6 preclusion or similar defense or counterclaim.

7 12.9 The Parties to the Settlement Agreement agree that the Total Settlement
8 Amount and the other terms of the Settlement were negotiated at arm's length and in good
9 faith by the Parties, assisted by an arm's-length mediation session facilitated by Tripper
10 Ortman, Esq., and reflect a settlement that was reached voluntarily based upon adequate
11 information and sufficient discovery and after consultation with experienced legal counsel.

12 12.10 The Plaintiffs and Class Counsel have concluded that the Settlement set forth
13 herein constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiffs
14 asserted against Defendants, including the claims on behalf of the Settlement Class, and that
15 it promotes the best interests of the Settlement Class.

16 12.11 To the extent permitted by law, all agreements made and orders entered during
17 the course of the Action relating to the confidentiality of information shall survive this
18 Settlement Agreement.

19 12.12 The Parties agree that Plaintiffs and Class Counsel are not required to return
20 any documents produced by HCAC until the final resolution of the Action. Within sixty (60)
21 days following the Effective Date, Class Counsel shall return to HCAC all documents
22 produced in the Action, or confirm in writing that all such documents have been destroyed.

23 12.13 The waiver by one Party of any breach of this Settlement Agreement by any
24 other Party shall not be deemed a waiver of any other prior or subsequent breach of this
25 Settlement Agreement.

26 12.14 This Settlement Agreement, including its Exhibits, constitutes the entire
27 agreement among the Parties, and no representations, warranties, or inducements have
28 been made to any Party concerning this Settlement Agreement or its Exhibit, other than the

1 representations, warranties, and covenants contained and memorialized in this Settlement
2 Agreement and its Exhibits.

3 12.15 This Settlement Agreement may be executed (either manually or electronically)
4 in one or more counterparts. All executed counterparts and each of them shall be deemed to
5 be one and the same instrument provided that counsel for the Parties to this Settlement
6 Agreement shall exchange among themselves original signed counterparts.

7 12.16 The Parties hereto and their respective counsel agree that they will use their
8 best efforts to obtain all necessary approvals of the Court required by this Settlement
9 Agreement.

10 12.17 This Settlement Agreement shall be binding upon and shall inure to the benefit
11 of the successors and assigns of the Parties hereto, including any and all Released Parties
12 and any corporation, partnership, or other entity into or with which any Released Party hereto
13 may merge, consolidate, or reorganize.

14 12.18 This Settlement Agreement shall not be construed more strictly against one
15 Party than another merely because of the fact that it may have been prepared by counsel for
16 one of the Parties, it being recognized that because of the arm's-length negotiations resulting
17 in the Settlement Agreement, all Parties hereto have contributed substantially and materially
18 to the preparation of the Settlement Agreement.

19 12.19 Except where this Settlement Agreement itself provides otherwise, all terms,
20 conditions, and Exhibits are material and necessary to this Settlement Agreement and have
21 been relied upon by the Parties in entering into this Settlement Agreement.

22 12.20 This Settlement Agreement shall be governed by California law. Any action
23 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in
24 Alameda County Superior Court, which shall retain jurisdiction over all such disputes. All
25 Parties to this Settlement Agreement shall be subject to the jurisdiction of Alameda County
26 Superior Court for all purposes related to this Settlement Agreement. This paragraph relates
27 solely to the law governing this Settlement Agreement and any action based thereon, and
28 nothing in this paragraph shall be construed as an admission or finding that California law

1 applies to the Released Claims of any Plaintiffs or Settlement Class Members who reside
2 outside of the state.

3 12.21 The Court shall retain continuing and exclusive jurisdiction over the Parties to
4 this Settlement Agreement for the purpose of the administration and enforcement of this
5 Settlement Agreement.

6 12.22 The headings used in this Settlement Agreement are for the convenience of the
7 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

8 12.23 In construing this Settlement Agreement, the use of the singular includes the
9 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

10 12.24 Each Party to this Settlement Agreement warrants that he, she, or it is acting
11 upon his or its independent judgment and upon the advice of his or its counsel, and not in
12 reliance upon any warranty or representation, express or implied, of any nature of any kind
13 by any other Party, other than the warranties and representations expressly made in this
14 Settlement Agreement.

15 Dated: July __, 2021

MARGARET RIVERA
PLAINTIFF

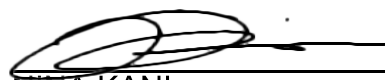
17 Dated: July __, 2021

KAY MANALIGOD
PLAINTIFF

20 Dated: July __, 2021

CHRISTINE ATENCIO
PLAINTIFF

24 Dated __, 2021


NINA KANI
General Counsel
HOME CARE ASSISTANCE OF
CALIFORNIA, LLC

1 applies to the Released Claims of any Plaintiffs or Settlement Class Members who reside
2 outside of the state.

3 12.21 The Court shall retain continuing and exclusive jurisdiction over the Parties to
4 this Settlement Agreement for the purpose of the administration and enforcement of this
5 Settlement Agreement.

6 12.22 The headings used in this Settlement Agreement are for the convenience of the
7 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

8 12.23 In construing this Settlement Agreement, the use of the singular includes the
9 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

10 12.24 Each Party to this Settlement Agreement warrants that he, she, or it is acting
11 upon his or its independent judgment and upon the advice of his or its counsel, and not in
12 reliance upon any warranty or representation, express or implied, of any nature of any kind
13 by any other Party, other than the warranties and representations expressly made in this
14 Settlement Agreement.

15 Dated: July __, 2021


Margaret Rivera (Jul 29, 2021 15:36 PDT)

MARGARET RIVERA
PLAINTIFF

17 Dated: July __, 2021


Kay Alyson (Jul 30, 2021 15:31 PDT)

KAY MANALIGOD
PLAINTIFF

20 Dated: July __, 2021


Christine Atencio (Jul 30, 2021 14:14 PDT)

CHRISTINE ATENCIO
PLAINTIFF

24 Dated: July __, 2021

NINA KANI
General Counsel
HOME CARE ASSISTANCE OF
CALIFORNIA, LLC

EXHIBIT 1

<<Class Member Name>>
<<Street Address>>
<<City, State Zip>>

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

This is a Notice of Settlement for the Class and Representative Action Titled:
Rivera, et al. v. Home Care Assistance, Inc, et al.
Superior Court of California, Alameda County
Case No. RG20058229

Please Read This Entire Notice Carefully. This Notice Involves Your Legal Rights.
How you choose to exercise those rights is entirely up to you. HCA will neither reward nor penalize you in any way based upon whether you decide to participate in the Settlement described below, object to it or exclude yourself from it.

A state court authorized this notice. This is not a solicitation from a lawyer.

You are receiving this notice because HOME CARE ASSISTANCE OF CALIFORNIA, LLC (“Defendant” or “HCA”) has agreed to settle a proposed class and representative action brought against it by former employees MARGARET RIVERA, KAY MANALIGOD and CHRISTINE ATENCIO (“Plaintiffs”) on behalf of current and former employees who worked as non-Lead Client Care Managers (“CCMs”) and/or Staffing Managers (“SMs”) for HCA in California during a certain period of time (the “Settlement”). You have been identified as part of the settlement class and are entitled to compensation. The lawsuit alleges that Defendants improperly classified the proposed Class Members as “exempt” salaried employees, and as a result violated various California Labor Code provisions. The lawsuit seeks to recover wages as well as statutory and civil penalties, attorneys’ fees and costs of litigation. Defendant vigorously disputes Plaintiffs’ allegations and maintains that it has properly classified CCMs and SMs as exempt employees under California and federal law. HCA further contends that it is not liable for any of the damages or penalties sought in the action, and that the action cannot be maintained as a class action.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid the additional time and expense of litigation, the Parties have mutually concluded that it is in their best interests and the interests of the Class to settle the action on the terms summarized in this Class Notice. The settlement was reached after mediation and arm’s-length negotiations between the parties. The Court has preliminarily

approved this settlement, subject to a further hearing to consider any objections by those settlement class members who do not opt out of the settlement. This Notice describes your rights and potential benefits under the settlement.

Where Can I Get More Information About the Lawsuit? The lawsuit was filed in the Superior Court of California, Alameda County (Rivera v. Home Care Assistance, Inc., Alameda County Superior Court Case No. RG20058229).

This Notice only summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you can review the entire settlement agreement and other documents related to the settlement by visiting the Settlement Administrator’s website at [insert URL]. If you want more information, you can also contact class counsel (whose contact information is under the heading “The Lawyers Representing You”).

Finally, for a small fee, all of the pleadings and other records in this litigation, including the Settlement Agreement, may be examined online on the Alameda County Superior Court’s website, known as 'DomainWeb,' at <https://publicrecords.alameda.courts.ca.gov/PRS/>. After arriving at the website, click the 'Search By Case Number ' link, then enter RG20058229 as the case number and click 'SEARCH.' Images of every document filed in the case may be viewed (for a charge) through the 'Register of Actions.'

You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

You are receiving this Notice because you are in the Class. You are in the Class because you worked for HCA as a non-Lead CCM and or non-Lead SM in California on or after March 11, 2016 through [insert date of Preliminary Approval] (the “Class Period”). This Notice describes your rights and potential benefits from a class and representative action settlement. You have the right to opt-out of the settlement, as described below.

The Court authorized this Notice because you have a right to know about the proposed Settlement and your options before the Court decides whether to grant final approval of the proposed Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING / RECEIVE A FULL SETTLEMENT PAYMENT	If you do not exclude yourself, as described below, you will receive a payment from the settlement approximately 70-80 days after the Court grants Final Approval of the Settlement. You will have ninety (90) days from the date on your individual settlement check to cash it. If you receive a settlement check, you <u>will release all claims asserted in the lawsuit</u>

	through the date 60 days after the Court enters preliminary approval of the Settlement. If you receive and do not cash a settlement check within 90 days, your share of the settlement contained in any uncashed settlement check will be directed to the California State Controller's Office to be held in your name as unclaimed funds.
OBJECT TO THE SETTLEMENT	You may object to the proposed Settlement by writing to the "Settlement Administrator" at the address listed below explaining why you disapprove of the proposed Settlement. If you object, you may also ask to speak in Court about the fairness of the settlement at the Settlement Hearing. If you wish to virtually appear at the Settlement Hearing via videoconference or telephone, you must mail the Settlement Administrator at the address listed below a Notice of Intention to Appear, or contact class counsel or the administrator to request information as to how to virtually attend the hearing (see page 9 below. You may object orally at the Final Approval hearing even if you do not mail a timely written objection to the settlement. If your objection is overruled at the hearing, you will still be bound by the Settlement and receive a payment from the Settlement Fund.
OPT OUT OF THE SETTLEMENT	Alternatively, you may exclude yourself from the Settlement by requesting exclusion from the settlement. If you exclude yourself from the settlement, you will receive no payment except a pro rata portion of the amount of the settlement allocated to the Private Attorneys' General Act ("PAGA") claims if you are an Aggrieved Employee (defined below) , and you will not be bound by any portion of the Settlement other than the release of the PAGA claims contained in the Settlement. That means you will preserve whatever right you might otherwise have, if any, to pursue claims for unpaid wages (including overtime), missed meal and rest breaks, inaccurate wage statements and/or waiting time penalties in a separate lawsuit. Instructions on how to exclude yourself from the Settlement are set forth below under the heading "Excluding Yourself From The Settlement".

What is this lawsuit about? Three former HCA employees brought this lawsuit alleging that HCA misclassified its CCMs and SMs as "exempt" salaried employees instead of paying them hourly, and as a result failed to pay them all wages due, including overtime wages and premium wages for non-compliant meal and rest periods, failed to provide accurate wage statements, and failed to timely pay final wages. Plaintiffs also allege that the Class is entitled to penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA") for these underlying violations. Defendant strenuously disputes the allegations, but have agreed to settle the lawsuit.

What are the terms of the Settlement? To settle the lawsuit, Defendants have agreed to pay a Total Settlement Amount of two million two-hundred fifty thousand dollars (\$2,250,000) to resolve all of

the claims in the lawsuit and be divided between the --- Class Members (including you) who do not opt out of the settlement ("Settlement Class Members"). The \$2,250,000 less deductions for (1) Class Counsel's fees (of up to one-third of the Total Settlement Amount) and their litigation expenses, (2) the service payments to each Class Representative for their service to the class in prosecuting this action in the amount of fifteen thousand dollars each (\$15,000), (3) all costs of administering the settlement up to a maximum of \$15,000, and (4) the \$15,000 allocation of funds to resolve PAGA claims, 75% of which will be paid by law to the California Labor and Workforce Development Agency ("LWDA"), and the remaining 25% of which will be divided proportionally to all Class Members who worked as a CCM and/or SM during the period March 11, 2019 through the date of Preliminary Approval. The remaining money in the Settlement Fund ("Net Settlement Fund") will be split up between the Settlement Class Members proportionally, based on the number of weeks each Settlement Class Member worked as indicated by the personnel records that HCA maintains. This calculation method is explained in more detail below.

Payments. Class Members who do not opt out of the Settlement (*i.e.*, Settlement Class Members) will receive a payment that will be calculated based on the number of weeks the Settlement Class Member worked for HCA during the Class Period as a non-Lead CCM and/or a non-lead SM. The number of weeks worked will be calculated through the personnel records that HCA maintains. Each Settlement Class Member's share of the settlement proceeds will go up or down depending upon the number of weeks that Settlement Class Member worked when compared to the other Settlement Class Members. Per these calculations, the amount you are estimated to receive, if you do not exclude yourself from the Settlement, is set forth in the box marked "Estimated Settlement Payment." Note, the Estimated Settlement Payment is a preliminary calculation. If one or more Settlement Class Members successfully challenge the Defendant's records, the Estimated Settlement Payment for the other Settlement Class Members, including you, shall be modified accordingly. To obtain this payment from the proposed Settlement, you do not need to take any action at this time.

A number of members of the Settlement Class have already received some payments from HCA apart from this Settlement in exchange for a release of claims. Plaintiffs argue that releases entered into after this Class Action was filed were improperly obtained and invalid, and that those individuals are entitled to a share of the settlement as well. HCA asserts that the releases are valid, and that individuals who signed them have waived any right to participate in this Settlement. As a compromise, the parties have agreed that the amount that these class members have already received from HCA will be deducted from the proceeds that they will receive from this Settlement, if any.

How do I challenge the number of weeks I worked during the Class Period? You may challenge the number of weeks worked identified in this Class Notice by submitting a written letter (postmarked by [insert end of Opt-Out Period]) to the Settlement Administrator stating you wish to challenge the number of weeks worked on your Class Notice and providing the basis for and documentation in support of your challenge. You will bear the burden of proof and must submit documentary evidence sufficient to prove the number of weeks you claim you worked for HCA as a non-Lead CCM and/or non-Lead SM during the Class Period. This means that if you fail to provide written documentation supporting a different amount than your Estimated Settlement Payment, your challenge will be

denied. Defendant shall have the right to respond to your challenge. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The personnel records, including payroll records, of Defendant shall be considered by the Settlement Administrator as the presumptive best evidence of the number of weeks worked.

How much is my settlement payment? Under the settlement allocation formula you have worked _____ weeks as a non-Lead CCM and/or non-Lead SM in California during the period March 11, 2016 to [insert date of Preliminary Approval] and are projected to receive approximately the following total amount (before tax withholdings):

[If the PCM received a payment from an Individual Release, but will still receive funds pursuant to the distribution formula, then include the following text: Defendants' records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$[INSERT AMOUNT], which has been deducted from your share of the settlement.]

[If the PCM received a payment from an Individual Release, and will NOT receive funds pursuant to the distribution formula, then include the following text: Defendants' records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$[INSERT AMOUNT]. The amount that you previously received has been deducted from the amount you would receive under this agreement. The amount you previously received is **greater** than the amount that you would receive under this agreement, and reduces the amount you are currently owed to \$0.00.]

Estimated Settlement Payment: \$ _____

The amount above will be reduced for any requested or required withholdings, including state and federal taxes, income withholding orders, garnishments, or levies. Thirty-three percent (33.33%) of the above payment will be treated as wages, subject to payroll taxes, and reported on a W-2. Thirty-three percent (33.33%) of the above payment will be treated as interest and thirty-four percent (33.33%) will be treated as non-wage damages, including penalties. Payroll tax withholdings will not be withheld from the non-wage portion of any payment, which portion will be reported on a Form 1099 if required by law. Neither Class Counsel nor HCA make any representations concerning the tax consequences of this settlement or participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.

Who is included in the Settlement? You are included in the Settlement because you worked at least one day for HCA as a non-Lead CCM and/or non-Lead SM during the Class Period.

What claims am I releasing? If you do not exclude yourself from the Settlement, you will be releasing all claims under state, federal and local law arising out of the allegations made in the Action, and that reasonably arise or could have arisen out of the facts alleged in the Action during the time you worked for Defendant as a non-lead CCM and/or non-lead SM within California, including claims arising under California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3, 226.7, 256, 500, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2,

1197, 1197.1, 1198, 2698, 2699, 2699.3, 2699.5, 2926, 2927, California Industrial Commission Wage Orders, Cal. Code Regs., tit. 8, section 11040, *et seq.*, Business and Professions Code section 17200, *et seq.*, and all class claims, representative claims, aggrieved employee claims, meal or rest periods, meal or rest period premiums, unpaid wages, overtime, double time, minimum wages, regular rate of pay, timely and complete payment of wages at separation, failure to provide accurate and itemized wage statements, failure to maintain accurate payroll records, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, PAGA penalties, waiting-time penalties, civil penalties, penalties of any nature, interest, fees, costs, failure to pay additional 401(k) or employee stock option plan benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, and any other claims alleged in the Action during the period March 11, 2016 through [insert 60 days after Preliminary Approval date]. All such claims shall be released as to the following entities and individuals: (i) Defendant Home Care Assistance of California, LLC, (ii) Home Care Assistance of California LLC's past, present, and future parents, subsidiaries and affiliates including without limitation any corporation, limited liability company, partnership, trust, foundation and non-profit entity which controls, is controlled by, or is under common control with Home Care Assistance of California, LLC; (iii) Home Care Assistance, Inc., Home Care Assistance, LLC, Home Care Assistance Management, LLC, and Home Care Assistance Holdings, LLC, (iv) the past and present shareholders, directors, officers, agents, employees, members, consultants, benefit plans, successor and assigns of any of the foregoing; and (v) any individual or entity that could be jointly liable with any of the foregoing.

HOW YOU GET A PAYMENT

How do I get my payment? To receive your settlement payment, you do not need to do anything and a check will be promptly sent after the Court finally approves the settlement. If you choose to exclude yourself, follow the procedure set forth below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

How do I exclude myself? If you don't want to be included in the Settlement, you must exclude yourself from this Settlement. To exclude yourself from the Settlement, you must send a letter by mail that says that you wish to opt out of the class action and the settlement of the case. You must sign the letter and include your full name, address, and last four digits of your Social Security/Tax Identification Number. The letter must be dated and signed, postmarked on or before [insert end of Opt-Out Period], and sent to and received at the following address:

Settlement Administrator
[insert name and address]

If you properly request to opt out of the settlement, you will not be legally bound by anything that happens in this lawsuit other than the resolution of the PAGA claims. You also will not be eligible to receive any settlement payment (except a pro rata portion of the amount of the settlement allocated to the PAGA claims), and you will not be allowed to object to the settlement.

If you do not opt out of the settlement yourself, you will be sent your individual settlement payment in a check to be mailed approximately 70-80 days after the Court grants Final Approval of the Settlement. You will have ninety (90) days from the date on each individual settlement check to cash it. If you do not cash your check within the 90-day period, your settlement payment(s) from the uncashed check(s) will be transmitted to the California State Controller's Office as unclaimed funds to be held in your name. If you do not opt out of the settlement, you **will release all claims discussed above** (see "What claims am I releasing?"), whether or not you cash the check.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in this case? The Court has decided that the lawyers at the law firm of HOYER & HICKS are qualified to represent you and the other Settlement Class Members. These lawyers are called "Class Counsel." The contact information for Class Counsel is:

Ryan L. Hicks
rhicks@hoyerlaw.com
HOYER & HICKS
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel.: (415) 766-3539
Fax: (415) 276-1738

How will the lawyers be paid? Class Counsel have pursued the lawsuit on a contingent fee basis and have not yet received any payment of fees or any reimbursement of their out-of-pocket expenses related to the recovery on behalf of the Settlement Class Members. As part of the settlement, subject to Court approval, Class Counsel will ask the Court to award payment of their fees and costs, based on the number of hours they invested into the case and other factors. The fees or costs that Class Counsel seek or that the Court awards will come from the Total Settlement Amount. In other words, the \$2,250,000 Total Settlement Amount will be reduced depending on the amount of attorneys' fees and costs that the Court awards. Court-approved fees will compensate Class Counsel for investigating the law and facts, litigating the case, and negotiating the settlement. Class Counsel will request one-third of the Total Settlement Amount as attorneys' fees (\$750,000), plus reimbursement of the costs they incurred in litigating the case.

Class Counsel will also ask the Court to approve "service payments" of up to \$15,000 each to Ms. Rivera, Ms. Manaligod, and Ms. Atencio, for their active participation in the lawsuit before the settlement and in recognition of the risks they took and their service to the Class. This also will also come from the Total Settlement Amount. Other costs incidental to the Settlement, including but not limited to a maximum of [INSERT QUOTED AMOUNT] for settlement administration, will also come from the Total Settlement Amount. \$15,000 of the Total Settlement Amount is also dedicated as resolving the PAGA claims, and 75% of that will be paid by law to the LWDA, and the remaining 25% will be distributed to Class Members who worked during the PAGA Statutory Period for penalties that the State could have sought against Defendant for the Claims alleged in the case.

Class Counsel's motion for attorneys' fees will be filed concurrently with the motion for final approval of this Settlement by [insert date] and will be available for your review. You may obtain a copy by contacting class counsel (whose contact information is at the end of this Notice, or at their website at [insert URL]), or by accessing the Court's website or visiting the office of the Clerk of the Superior Court, County of Alameda as described on page 2 above.

OBJECTING TO THE SETTLEMENT

How do I object to the Settlement? As a Settlement Class Member, you may object to the proposed settlement in writing. You may also appear at the Settlement Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (*Rivera v. Home Care Assistance, Inc.*, Case Number RG20058229), (b) be mailed to the Settlement Administrator identified at the address below, and (c) be postmarked on or before [Opt-Out Deadline]. You must give all reasons why you think the Court should not approve the Settlement. The Court will consider your views. You must sign the objection and include your full name, address, last four digits of your Social Security, and telephone number(s).

Settlement Administrator
[insert name and address]

If your objection is overruled at the Settlement Hearing, you will still receive your settlement checks and be bound by the Settlement.

THE COURT'S SETTLEMENT HEARING

What is the Settlement Hearing? The Court will hold a Settlement Hearing to decide whether to provide final approval of the Settlement. You are not required to attend the Settlement Hearing, and will still receive a payment even if you do not attend the Settlement Hearing. If you wish, you may attend and you may ask to speak. If you wish to bring anything to the Court's attention about the Settlement, you must provide it in writing in your objection letter mentioned above, which must be mailed to the "Settlement Administrator" at the address above by [insert end of Opt-Out Period]. You may also appear at the hearing virtually by telephone or videoconference as described below, if in person appearances are not permitted.

When and where will the Court decide whether to approve the settlement? The Court is currently scheduled to hold a Settlement Hearing on [insert date] at [insert time], at the Superior Court, County of Alameda, [INSERT ADDRESS], Department [DEPARTMENT], Oakland, California 94612. The date and time of the Settlement Hearing may be changed without further notice. You can confirm the date and time of the Settlement Hearing by checking the case docket (see "Where Can I Get More Information About The Settlement, above) or by contacting Class Counsel.

At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are challenges or objections, the Court will consider them. The Court will listen to any people

who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

Do I have to come to the hearing? No, but if you plan to object to the settlement you may want to appear. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you submit an objection, you may come to Court to talk about it. However, as long as you submitted a timely, valid written objection to the Settlement Administrator, the Court will consider it. You may also pay another lawyer to attend, but it is not necessary.

May I speak at the hearing? If you submit a timely, valid objection to the Settlement and Notice of Intention to Appear, you may ask the Court for permission to speak at the Settlement Hearing. You may also attend the hearing virtually even if you do not submit an objection by mail. If you wish to attend the hearing by telephone or videoconference, you must contact the administrator [INSERT] (see contact information above), or Class Counsel (Mr. Hicks, see contact information below), and they will provide you with instructions as to how to appear. You cannot speak at the hearing if you opt out of the settlement.

Please do not contact the clerk of the Court for more information about the case.

DATED: [Insert Date of Mailing], 2021

EXHIBIT 2



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Estimate #:	13497	Prepared By:	Michael Sutherland
Estimate Date:	6/22/2021	Direct Dial #	321-223-5067
		Email:	msutherland@simpluris.com

	<u>Plaintiff Attorney</u>		<u>Defense Attorney</u>
Attorney/Client:	Ryan L. Hicks	Attorney/Client:	Ken Sulzer, Anthony Sbardellati
Firm:	Hoyer & Hicks	Firm:	Constangy Brooks
Email:		Email:	

Case Name: Rivera v Home Care Assistance: Opt Out Settlement

Capped Fee* **\$7,900**

Terms:

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

Total Possible Class Size:	388	Undeliverable Rate:	10%
Response Rate:	1%	Call Rate:	n/a
Mailing Document Language:	English	Redistribution:	None
Reminder Post Card	No	State	CA
Uncashed Checks	Escheat	Tax Years	One

Case Setup

Data Compilation - Develop Case Specific Response Tracking - Error Reports

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$125.00	3	\$375.00
Database Manager - Initial Data Analysis	\$140.00	3	\$420.00
Total			\$795.00

Notification

Mailing Notice Pack- 5 pg Notice, Double Sided - English

Category	Unit Value	# of Units	Total
Mailing Notice Pack	\$1.00	388	\$388.00
Postage	\$0.55	388	\$213.40
NCOA/CASS/LACS	\$10.00	1	\$10.00
Undeliverable Processing	\$0.25	39	\$9.70
Skip Trace RUM	\$2.00	39	\$77.60
Remail	\$2.00	33	\$65.96
Final Approval mailed	\$1.00	388	\$388.00
Clerical	\$50.00	2	\$100.00
Total			\$1,252.66

Call Center-Not requested

Establish Case Specific Toll Free Number

Category	Unit Value	# of Units	Total
Customer Service Reps/Call Center Support	\$75.00	0	\$0.00
800 # Charges	\$0.10	0	\$0.00
Total			\$0.00



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Administration

Process Mail, Opt-Outs or Objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	1	\$125.00
Resolving Mismatched TINs	\$75.00	1	\$75.00
Dispute/Deficiencies - Send One Cure Letter	\$2.50	1	\$2.50
Opt Out Processing	\$2.50	1	\$2.50
Data Entry	\$50.00	1	\$50.00
Project Manager	\$125.00	2	\$250.00
Weekly Reporting to Counsel	WAIVED	12 Wks of Reporting	\$0.00
Total			\$505.00

Distribution

Setup a Disbursement Account. • \$2,250,000 gross settlement fund Net Settlement Fund must have calculation to account for PCMs who received prior payments from individual releases, who will get payment from PAGA allocation and also payment from NSF reflecting difference between what they were already paid and what they would receive under pro rata calculation of this settlement.

Print & Mail Checks to Class Members - W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

Account Management & Reconciliation. • **Employer payroll taxes not part of settlement.**

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$140.00	4	\$560.00
Disbursement Manager - Data Validation	\$75.00	2	\$150.00
Setup Banking Account/QSF	\$300.00	1	\$300.00
Print & Mail-Check	\$3.00	388	\$1,164.00
Postage	\$0.55	388	\$213.40
Process Returned Checks	\$0.25	4	\$0.97
Skip Trace Search Undeliverable Checks	\$5.00	4	\$19.40
Remail Checks	\$5.00	4	\$19.40
QSF Account Reconciliation	\$250.00	1	\$250.00
Individual Federal/State Tax Reporting	\$350.00	1	\$350.00
QSF Reporting/Declaration	\$300.00	1	\$300.00
QSF Annual Tax Preparation Fee(2021)	\$750.00	1	\$750.00
Reissuing Checks/Mailing	\$5.00	6	\$29.10
Reissuing W2s/1099s	\$5.00	6	\$29.10
Disbursement Agent	\$75.00	1	\$75.00
Escheat Management	\$250.00	1	\$250.00
Disbursement Manager	\$125.00	2	\$250.00
Total			\$4,710.37



Class Action Settlement Administration

3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104 www.simpluris.com

Case Wrap Up

Send Final Reports to Counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	1	\$125.00
Clerical-Clean Up Any Misc	\$50.00	1	\$50.00
Project Manager-Wrap-up Final Issues	\$125.00	1	\$125.00
Total			\$300.00

Postage \$426.80

Total Case Costs

\$7,563.03

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 – Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 – Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning

EXHIBIT 3

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And CHRISTINE ATENCIO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

MARGARET RIVERA, KAY MANALIGOD,
and CHRISTINE ATENCIO, on behalf of themselves
and all others similarly situated, all aggrieved
employees, and the State of California,

Plaintiffs,

vs.

HOME CARE ASSISTANCE, INC., HOME CARE
ASSISTANCE OF CALIFORNIA, LLC, HOME CARE
ASSISTANCE MANAGEMENT, LLC HOME CARE
ASSISTANCE HOLDINGS LLC, and DOES 5-25,

Defendants.

Case No. RG20058229

CLASS AND REPRESENTATIVE ACTION

DECLARATION OF CHRISTINA WIELLETTE IN SUPPORT
OF CY PRES

I, Christina Wiellette, declare as follows:

1. I am the Director of Legal Access Alameda (formerly the Alameda County Bar Association Volunteer Legal Services Corporation), a California 501(c)3 nonprofit corporation. I have personal knowledge of the facts stated below, and could and would testify to those facts if called upon to do so.

2. Mission and History of Legal Access Alameda

Legal Access Alameda provides free direct legal assistance to Alameda County's low- income population by mobilizing volunteer attorneys to provide pro bono legal services. Legal Access Alameda also works to extend access to justice to low- and modest-means individuals who would not otherwise have access to legal assistance. Legal Access Alameda was established in 1982 by the Alameda County Bar Association and incorporated as a 501c3 in 1985. Since its founding, Legal Access Alameda has responded to the particular legal needs of the Alameda County community, developing programs in response to various issues as they arise, in addition to addressing the consistent legal problems typically faced by low-income litigants. More recently Legal Access Alameda has expanded some services, specifically those in response to natural disasters like wildfires and the CoVid pandemic, to individuals in the broader Bay Area and California.

3. CCP 384

CCP 384(b)(3)(C) allows cy pres money to go to nonprofit organizations providing civil legal services to the indigent. Legal Access Alameda is an appropriate recipient of cy pres funds arising from this case because Legal Access Alameda is a 501c3 nonprofit whose mission is to provide civil legal services to the indigent.

4. Neither plaintiff counsel Ryan L. Hicks, nor his partner Richard Hoyer, both of Hoyer & Hicks, nor defense counsel Marlene Muraco of Littler Mendelson P.C., have any significant connections or relationship to Legal Access Alameda such that a potential conflict of interest would arise.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Location, California on August 12, 2021.

Christina Wiellette

Digitally signed by Christina Wiellette
DN: cn=Christina Wiellette, o=Legal Access
Alameda, ou, email=christina@acbanet.org, c=US
Date: 2021.08.12 13:00:37 -07'00'

Christina Wiellette