

HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738

Attorneys for Plaintiffs
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 HOLDINGS 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 FINAL
APPROVAL OF SETTLEMENT**

Date: April 28, 2022

Time: 3:30 p.m.

Dept.: 17

Reservation No.: A-20058229-001

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 Plaintiff in the above-entitled action. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could competently testify to the same.

2. I was admitted to practice law in California in 2008. Since then I have focused almost exclusively on employment disputes representing Plaintiffs. Specifically, I have represented

1 clients with claims of sexual discrimination and harassment, racial discrimination and
2 harassment, retaliation, breach of contract, and wage and hour disputes. More than half of
3 my practice consists of complex wage and hour class actions.

4 3. I specifically have acted or am acting as class counsel in numerous cases. A partial
5 list of class actions in which I have been counsel includes: *Wahid v. Nations Foodservice,*
6 *Inc.* and *Saavedra v. Nations Foodservice, Inc.* (Alameda County Superior Court Nos. RG
7 05246866 and RG 08421015) (wage and hour class action regarding misclassification of
8 restaurant managers); *Stockwell, et al v. City and County of San Francisco*, (N.D.Cal. Case
9 No. C 08-05180 PJH) (disparate impact age discrimination claims on behalf of police
10 officers); *Kauffman v. Bank of America* (D.Kan. Case No. 10-md-2138-JWL-KGS) (wage and
11 hour class action and multidistrict litigation and settlement concerning unpaid wages and
12 overtime and missed meal and rest periods under the FMLA and California law); *In Re:*
13 *Sanofi-Aventis U.S., Inc. Wage and Hour Litigation* (N.D.Cal. Case Nos. 3:10-CV-04141
14 SBA; 3:10-CV-04672 SBA) (class of pharmaceutical sales representatives in a state-wide
15 misclassification case); *Neu-Helms v. UHS of Delaware, Inc.* (Alameda County Case No.
16 RG08425516) (post- certification settlement of class claims regarding missed meal and rest
17 periods for classroom assistants at schools for special needs children); *Al Lahham, et al vs.*
18 *Serra Medical Transportation*, (N.D.Cal. Case No. 3:12-cv-00355-CRB) (FLSA Collective of
19 drivers deprived of overtime pay and meal and rest breaks); *Okechukwu, et al. vs. DEM*
20 (putative class arbitration representing limousine drivers on claims of unpaid overtime, as
21 well as meal and rest break violations); *Sanchez-Ramirez v. The Consulate General of*
22 *Mexico in San Francisco* (N.D.Cal. Case No. 4:12-cv-03485-PJH) (represented non-exempt
23 workers on class claims of unpaid overtime and missed breaks); *Asghari, et al. v. Friendly*
24 *Cab Company, Inc.* (Alameda County Case No. AG11556435) (class settlement on behalf of
25 taxicab drivers alleging improperly assessed processing fees on credit card transactions);
26 *Shaghafi v. ValleyCare Health System* (Alameda County Case No. RG12618899) (class
27 settlement of meal and rest period claims on behalf of respiratory therapists); *Jenkins v.*

1 *Goodwill Industries of the Greater East Bay, Inc.* (Alameda County Case No RG12659632)
2 (class settlement of unpaid wages, overtime, and meal and rest period violations); *Guilbaud*
3 *v. Sprint/United Management Co. Inc.* (N.D.Cal. Case Nos. 3:13-cv-04357-VC and 3:14-cv-
4 02642-VC) (final approval of class and FLSA settlement for off-the-clock and missed meal
5 and rest period claims on behalf of class and FLSA collective of non exempt retail store
6 employees); I am currently counsel of record in the following pending wage and hour
7 class/representative actions: *Javier v. Eat24, LLC*, (SF Superior Court Case No. CGC-15-
8 545485) (class of online customer service specialists alleging missed meal and rest periods);
9 *Casas v. Mission-Hope Day Program, LLC et al.* (Alameda County Case No. RG15797671)
10 (class and PAGA claims of missed meal and rest periods for employees who care for special
11 needs adults); *Avila v. Cold Spring Granite Corp.* (E.D.Cal. Case No. 1:16-cv-01533-AWI)
12 (putative class of non-exempt employees alleging unpaid overtime due to non-compliant
13 Alternative Work Schedule); *Villarreal v. Perfection Pet Food* (E.D.Cal. Case No. 1:16-cv-
14 01661-LJO-EPG) (pet food factory workers alleging missed rest and meal periods for shifts
15 exceeding 10 hours); *Coppernoll v. Hamcor Inc.* (N.D.Cal. Case No. 3:16-cv-05936-WHA)
16 (piece-rate automotive service technicians alleging off the clock work, unpaid overtime,
17 missed breaks); *Coppernoll v. Hamcor Inc.* (Alameda County Case No. RG16843171)
18 (parallel PAGA-only state court action). *Ornelas v. Maplebear, Inc. d/b/a Instacart* (Santa
19 Clara Case No. 18CV323046) (PAGA-only claim involving in-store shoppers with meal and
20 rest period, unpaid wages and derivative claims); *Hartley v. On My Own Independent Living*
21 *Services, Inc.* (E.D.Cal. Case No. 2:17-cv-00353-KJM-EFB)(PAGA-Only Action for overtime
22 for in-home caregivers); *Morgan-Cervantes v. Custom House Hotel L.P.* Monterey County
23 Case No. 18CV000321 (Class action on behalf of housekeeping workers asserting meal and
24 rest period violations); and *Wiley v. Health Services Media, Inc.* (N.D.Cal. Case No. 3:18-cv-
25 06680-SK) (Class action involving house cleaners misclassified as independent contractors);
26 *Magee v. AEG Management Oakland, LLC*, (N.D.Cal. Case No. 3:17-cv-02631-JD)(Class
27 Action on behalf of security personnel working at sporting and entertainment events at the
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1 Oakland Coliseum). *Gutierrez v. El & El Wood Products Corp.* (Sacramento County Case
2 No. 34-2019-00268549) (Class/PAGA Action involving wage and hour claims of wood
3 manufacturing workers); *Benroth v. Glassybaby, LLC, et al.* (Alameda County Case No.
4 HB19045978) (Class/PAGA action involving wage and hour claims of glassblowers); *Rivera,*
5 *et al. v. Home Care Assistance, Inc. et al.* (Alameda County Case No. RG20058229)
6 (Class/PAGA action involving healthcare workers misclassified as exempt from overtime);
7 and *Hand v. Spread Your Wings, LLC, et al.* (Contra Costa County Case No. C20-02287)
8 (PAGA action involving improper payroll practices and bounced paychecks); *Castaneda, et*
9 *al. v. S&F Towing, LLC, et al.* (Alameda County Case No. RG18932965) (Class/PAGA Action
10 involving wage and hour claims of tow truck drivers and dispatchers).

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

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

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

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

24 8. Prior to the mediation, Defendants provided documents related to their meal and rest
25 period, payroll, and timekeeping policies during the Class Period, along with summary data
26 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
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1 PCMs based on individualized questions as to whether each individual PCM was
2 misclassified as exempt, and if a PCM was misclassified as to how many hours each PCM
3 worked and whether and why any rest or meal periods were not taken. With Mr. Ortman's
4 assistance, the parties entered into a Memorandum of Understanding as to the material terms
5 of the Settlement at the mediation. Ultimately, the parties reached final agreement and
6 executed the Settlement Agreement on August 11, 2021. The agreement itself includes the
7 [Proposed] Class Notice (Exhibit 1 thereto).

8 14. Plaintiff's motion for preliminary approval was set for hearing on September 30, 2021.
9 The Court issued a tentative ruling continuing the hearing in order to give the parties an
10 opportunity to address concerns the Court had with the form of notice and contents of the
11 proposed settlement agreement. The parties addressed those concerns by executing an
12 amended settlement agreement, and the supplemental materials were filed with the Court on
13 October 25, 2021. The Court ultimately granted preliminary approval of this Settlement on
14 October 28, 2021. A fully executed copy of the amended Settlement Agreement and the
15 exhibit thereto is attached as Exhibit 1.

16 15. Thereafter, the Administrator, Simpluris, Inc. proceeded with the Notice process per
17 the terms of the Settlement Agreement, as described below and in the Administrator's
18 declaration of Lindsay Kline ("Kline Dec.") attached hereto as Exhibit 2.

19 16. Plaintiffs and their counsel are of the opinion that the Settlement Agreement is well
20 within the range of reasonableness and is in the best interest of the proposed settlement
21 class in light of all known facts and circumstances, including the risk of significant delay,
22 defenses asserted by Defendants, and potential appellate issues.

23 **SETTLEMENT CLASS CERTIFICATION REQUIREMENTS**

24 17. Defendants identified 394 class members, persons who worked for it as CCMs and/or
25 SMs in California during the Class Period. There is no dispute that the numerosity
26 requirement is satisfied.

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

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

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

12 21. While Class Counsel remains ultimately confident in the merits of our legal arguments,
13 Plaintiffs were put in the position of negotiating a settlement at this juncture based on
14 unsettled dispositive law and conflicting evidence. Plaintiffs and the class would potentially
15 face years of litigation and individual arbitrations to achieve a verdict which still may not have
16 been collectible for many years due to potential appellate issues, uncertainties regarding the
17 precise amount of damages due to each PCM. PCMs' unwillingness to sign declarations out
18 of fear of retaliation rendered success of Plaintiff's certification motion difficult. It was agreed
19 upon by Plaintiffs' Counsel and the class representative that a settlement at this juncture in
20 the sum agreed upon was in the best interests of the class.

21 **OVERTIME CLAIMS**

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

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

4 24. Plaintiffs contend Defendants improperly classified them and the CCMs and/or SMs
5 as exempt employees and therefore not entitled to overtime pay.

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

15 26. The CCMs served as the point of contact for clients and essentially worked as
16 customer service representatives. Their work involved common sense and clearly defined
17 guidelines that a CCM followed and did not set. If a situation was more complex, the CCM
18 had to consult with their supervisors or someone further up the HCA chain of command for
19 instruction on what to do. The CCMs are not medical clinicians. They do not receive any
20 commissions, so they are not salespersons. CCMs were not managers and did not directly
21 supervise anyone. They were themselves directly supervised by their own supervisors. They
22 did not set any HCA policies. They did not spend more than 50% of their time engaged in
23 exempt duties or regularly exercise independent discretion or judgment. The CCMs
24 interviewed by Plaintiffs reported working an average of at least 60 hours per week. This
25 increased substantially when the CCM was “on-call,” fielding the night and weekend calls.
26 Even when they were not “on call,” they fielded communications from clients, SMs, and
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1 supervisors essentially every night after they left the office, every morning before they arrived,
2 and every weekend.

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

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

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

8 30. Plaintiffs estimate that Defendants' potential exposure was approximately
9 \$29,594,956.94 for the overtime claim.

10 31. Plaintiffs' counsel were aware of these risks and took them into account when
11 discounting the claims for settlement purposes.

12 **MEAL AND REST PERIOD CLAIMS**

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

17 33. Given their misclassification as exempt employees, CCMs and SMs were not
18 appropriately compensated for the massive hours they worked each week. Furthermore, they
19 report that they were told meal and rest period policies did not apply to them because they
20 were salaried, despite many PCMs' complaints about the lack of breaks and heavy
21 workloads.

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

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

36. This inquiry is potentially highly individualized as to the timing of each meal/rest period, reasons that the meal period was less than 30 minutes or a rest period was less than 10 minutes, and whether a *de minimis* argument even applies to a meal or rest period,¹ which made class certification on the issue more difficult. Defendants also assert (in addition to being properly classified as exempt) that there was enough time for PCMs to take a meal period, or that PCMs waived their meal periods willingly and/or chose to take them after the fifth hour of work. Indeed, some of the PCMs interviewed indicated that they were able to take meal and rest periods, adding another hurdle to certification.

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

INACCURATE WAGE STATEMENT CLAIMS

38. Plaintiffs contend that Defendants' wage statements were necessarily inaccurate as PCMs were misclassified and their wage statements failed to include all hours worked. The wage statements were inaccurate in other respects as well giving rise to penalties pursuant to Labor Code § 226 due to the failure to record meal periods, all hours worked, and premium

¹We note that the California Supreme Court recently held that the federal *de minimis* rule is not incorporated 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 wages owed.² Common questions predominate in claims regarding such claims, which are
2 well-suited to class treatment. See *Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal.App.4th
3 1286, 1304

4 39. Defendants maintain that the class members received all meal and rest periods to
5 which they were entitled, thus none of the wage statements were inaccurate. They further
6 contend that even if the wage statements were inaccurate, the class members did not suffer
7 any “injury” required to establish liability for penalties under § 226.

8 40. Plaintiffs’ counsel were aware of all of these risks and took them into account when
9 discounting the claims.

10 **WAITING TIME PENALTIES**

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

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

20 43. Plaintiffs’ counsel were aware of all of these risks and took them into account when
21 discounting the claims.

22 **DERIVATIVE PAGA PENALTIES**

23 44. Plaintiffs’ claims on behalf of similarly aggrieved PCMs seeking penalties under the
24 PAGA are also derivative of the meal and rest period claims discussed above, which also

25 ² We also note that there is one recent California case, that asserts in dicta that claims for inaccurate wage
26 statement and waiting time penalties cannot be based on a claim for missed meal or rest breaks (*Naranjo v.*
27 *Spectrum Sec. Servs., Inc.* 40 Cal.App.5th 444 (2019), review granted, 455 P.3d 702 (Jan. 2, 2020), contrary
28 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 resulted in violations of Labor Code §§ 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558,
2 1174.5, 1197, 2699(f), and 2810.5 in addition to the violations asserted hereinabove. While
3 Plaintiffs are confident that they would have been able to proceed on their PAGA claims for
4 penalties regardless of whether a class was certified under CCP § 382, and despite
5 Defendants' various purported and challenged Individual Releases and arbitration
6 agreements, Defendants still maintain that they would have prevailed on all or most of the
7 claims, negating the derivative PAGA claims.

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

20 46. Courts have discretion to reduce any amount of penalties awarded under PAGA, and
21 it is very possible that the Court could find that a \$250/\$1,000 penalty under the PAGA for a
22 violation of §226.3 is duplicative of the \$50/\$100 penalty provided specifically to employees
23 for a violation of §226(e), since the exact same conduct gives rise to the exact same violations
24 under both statutes.³ While Plaintiffs maintain that the PAGA penalties stack on top of any
25 penalties available to employees for the underlying violations, there is currently no uniform

26
27 ³ We note that although the vast majority of cases find that any violation of § 226 gives rise to penalties under
28 § 226.3, a recent case, *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334 has held that penalties under
§ 226.3 are only available "where the employer fails to provide wage statements or fails to keep required
records." If the Court were to follow *Gunther*, it is unlikely that it would award *any* § 226.3 penalties.

1 guidance or authority available to predict whether this Court would award all of the PAGA
2 penalties (an estimated \$17,739,000.00), deem them to be wholly duplicative, or something
3 in between. Even if the Court were to grant substantial PAGA penalties at trial, the lion's
4 share would go to the State instead of the PCMs whose rights were violated, and only 25%,
5 or \$4,434,750.00 would go to the aggrieved employees themselves. Any PAGA award would
6 be influenced by the presence or absence of a certified class, and presumably the PAGA
7 penalties awarded would be of a greater amount if a class were not certified at trial. Since all
8 of the penalties arise out of the underlying misclassification claim (and the derivative claims
9 based thereon), there is a substantial risk that even if Plaintiffs prevail on the PAGA claims,
10 any award could be reduced to nearly nothing by the Court so as to prevent the Plaintiff and
11 Class Members from recovering twice (or over a dozen different separate penalties in
12 addition to those already provided for their underlying primary claims) for the exact same
13 violations, especially taking into account the fact that the PCMs could only recover 25% of
14 any such award.⁴

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

21 48. Courts also regularly exercise discretion in reducing PAGA penalties. The Labor Code
22 grants courts discretion to reduce a PAGA penalty if, "based on the facts and circumstances
23 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
24 oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2); *Romo v. GMRI, Inc.*, 2014 WL

25 ⁴ But note, because Labor Code § 226 already incorporates its own penalty provisions, an award of additional
26 PAGA penalties – or an award of the maximum penalty amount provided by PAGA – is uncertain. See Lab.
27 Code § 2699(f); *see also Guifi Li v. A Perfect Day Franchise Inc.*, (N.D. Cal. 2012) 2012 WL 2236752 at *17.
28 Moreover, even assuming Plaintiffs' 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 11320647, at *7 (C.D. Cal. Feb. 18, 2014) (“The court retains discretion over awards under
2 a PAGA claim”); Cardenas v. McLane Foodservice, Inc., 2011 WL 379413, at *4 (C.D.
3 Cal. Jan. 31, 2011) (“The PAGA text also provides the Court with the discretion to limit the
4 amount Plaintiff may recover from the employer.”); Bright v. 99c Only Stores, 189 Cal. App.
5 4th 1472, 1480 n.8 (2010) (“The trial court has discretion to award less than the maximum
6 amount of the civil penalty”).⁵

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

9 50. Plaintiffs’ counsel were aware of all of these risks and took them into account when
10 discounting the claims.

11 **CLASS ENHANCEMENT AWARD**

12 51. The Plaintiffs have submitted declaration concurrently with the instant motion for final
13 approval which informs the Court of the time they each spent on behalf of the class in this
14 litigation. The declaration of plaintiff Rivera is attached hereto as Exhibit 3, the declaration of
15 plaintiff Manaligod is attached hereto as Exhibit 4, and the declaration of plaintiff Atencio is
16 attached hereto as Exhibit 5. Based upon the time and effort Plaintiff put into this case, we
17 believe that a modest enhancement award of \$15,000, less than 1% of the total settlement
18 sum is appropriate and reasonable.

19 52. I performed a review of the communications between our firm and Plaintiffs, and the
20 plaintiffs read and/or sent hundreds of email communications and text messages concerning
21 this case. I also estimate that members of my firm personally spoke with each of the Plaintiffs
22 on the telephone at least 20 times regarding this case, and that my partner and associates
23 also engaged in at least 75 communications with Plaintiffs in relation to this case.

24
25
26 ⁵ 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).

NO OTHER PENDING CASES

53. Class Counsel is aware of no other class or representative case pending in any jurisdiction in which similar class claims are asserted on behalf of the PCMs.

FURTHER TESTIMONY REGARDING THE VALUE OF THE SETTLEMENT

54. Class Counsel considered all of the risks discussed hereinabove in light of the amount of the overall settlement offered and the amount actually to be disbursed to the Participating Class Members. Under the Settlement Agreement, the Class Members are to receive a reasonable percentage of the maximum estimated recovery for all their claims based on the substantial risk that Defendants would prevail at either the certification stage, or at trial with respect to the separate claims, or successfully move to compel individual arbitrations for over half of the PCMs, and that any PAGA penalties could likely be substantially reduced or eliminated as duplicative. Furthermore, based on the substantial costs of statistical experts and near certainty that any judgment would be appealed on any one of multiple issues due to the lack of case law on point (including: “down time” as off duty meal/rest period time, the use of representative testimony at trial, whether common or individual questions predominate on the underlying claims or with respect to damages, whether any of the PAGA penalties sought are duplicative, etc.), it would likely take many years for the class to recover anything if they prevailed at trial, and in subsequent appeals on all issues. Based thereon, Plaintiffs and their Counsel concluded that this settlement constituted a fair and reasonable recovery for the class.

55. Plaintiff also maintains that the purported arbitration agreements were improper class communications lacking all of the information necessary to permit PCMs to decide whether to execute them (and necessarily remove themselves from participation in the putative class), but we are unaware of any case finding an arbitration agreement to be invalidated for the same reasons as a *Pick Up Stix* release (lack of information about the underlying class action). Roughly one-third of the class members were subject to the purported arbitration agreements, further potentially reducing the size of the putative class.

1 56. Based on Class Counsel's investigation and dozens of interviews with PCMs (as
2 discussed in the previous Hicks Declaration supporting the instant motion), we believe it likely
3 that at trial the amount of unpaid overtime would likely be closer to 10 hours than 20 hours
4 per week, which would reduce the total non-PAGA exposure from \$41,830,987.38 to
5 approximately \$27,033,508.91 assuming certification and liability on all non-PAGA claims.
6 However, if the arbitration agreements were upheld, which seemed likely to counsel despite
7 our arguments of impropriety given the current state of the law regarding arbitration
8 agreements, the class size would be reduced by approximately 54.2%, resulting in a likely
9 equal percentage in the decrease in class liability, to \$12,364,162.99. Then, we assigned a
10 further risk on certification of 40%, reducing the likely liability to \$4,945,665.20. Finally,
11 assuming a class was certified, based on our interviews of class members, we assumed that
12 upon deposition, at least 15% would provide testimony indicating that they were in fact
13 properly classified as exempt consistent with our interviews, reducing the likely liability to
14 approximately \$4,203,815.42 and opening the door to a motion for decertification, which
15 could very likely be successful if a large enough number of PCMs provided unfavorable
16 testimony.

17 57. With respect to the stacked PAGA claims, all of which are entirely derivative of the
18 underlying non-PAGA claims, based on the cases we cited above in paragraph 48, we
19 believed that the PAGA damages would likely be reduced by at least 85% based on those
20 cases.

21 58. Hence, we valued the stacked PAGA penalties at a realistic maximum of roughly
22 \$2,660,850, only \$665,212.50 of which would go to the PCMs. Assuming a class was
23 certified, and a trial was completed in one or two years' time, we believe that it is very likely
24 that the Court would even further reduce the estimated PAGA penalties as duplicative. Also,
25 if the Court were to follow the recent *Gunther* decision cited above holding 226.3 penalties
26 are only available when no wage statements are provided and/or no timekeeping records are
27 kept, it would not award *any* 226.3 penalties based on the facts of this case.

1 59. While Plaintiffs sought injunctive relief in the complaint, Defendants reviewed their
2 policies and changed the PCMs' job duties prior to the final approval date. Going forward
3 Defendants maintain that they will be fully compliant with the overtime exemption laws with
4 respect to the PCMs. Thus, prospective injunctive relief is unnecessary and without value.

5 **ALLOCATION OF PRO RATA SETTLEMENT AWARDS**

6 60. Per the Settlement Agreement, one-third (33.33%) of each CM's *pro rata* Individual
7 Settlement Award payment will be treated as non-wage alleged unpaid penalties for which
8 an IRS Form 1099 will be issued, if required; one-third (33.33%) will be treated as non-wage
9 alleged unpaid interest for which an IRS Form 1099 will be issued, if required; and one-third
10 (33.33%) will be treated as wages for which an IRS Form W-2 shall be issued. Individual
11 PAGA Payments made to Settlement Class Members will be designated as alleged unpaid
12 penalties in their entirety, for which an IRS Form 1099 will be issued, if required. This
13 allocation is appropriate because the potential damages arise out of the unpaid overtime and
14 break premium claims, but a significant portion of the total exposure was based on the
15 derivative penalties, including waiting time penalties, and prejudgment interest over the
16 course of the entire class period. As discussed elsewhere in this declaration and the motion
17 it supports, the PAGA penalties are subject to discretionary reduction, and only 25% of those
18 penalties could be awarded to the class members. The tax allocation is appropriate.

19 **TESTIMONY CONCERNING THE NOTIFICATION PROCESS**

20 61. As of the date of this declaration, Class Counsel has not been served with any
21 objections or opt outs to the Settlement Agreement.

22 62. Attached hereto as Exhibit 2 is the Kline Dec. submitted on behalf of the Settlement
23 Administrator Simpluris, Inc. outlining the notification and distribution process. We note that
24 the opt out deadline was March 7, 2022, and we will submit a supplemental declaration from
25 the Administrator if we receive any updated information from any remailed notices.

TESTIMONY CONCERNING THE PROPOSED CY PRES BENEFICIARY

63. As noted at the preliminary approval stage, no attorney at Hoyer & Hicks has any ties to Legal Access Alameda (“LAA”); they have never litigated a case together; no member of Hoyer & Hicks has ever been on that entity’s Board of Directors or had any other connection with the LAA other than naming them as a *cy pres* beneficiary. Attached herewith and re-submitted to the Court as Exhibit 6 is the Declaration of Christina Wiellette, the Director of Legal Access Alameda (formerly the Alameda County Bar Association Volunteer Legal Services Corporation), a California 501(c)3 non-profit corporation, in which Ms. Wiellette provides testimony regarding LAA’s qualifications for designation.

Executed on April 4, 2022, at San Francisco, CA.

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PROOF OF SERVICE BY EMAIL

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

On the date below, I served:

DECLARATION OF RYAN L. HICKS SUPPORTING MOTION FOR AN ORDER AND JUDGMENT:

- (1) GRANTING FINAL APPROVAL OF SETTLEMENT;
(2) AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;
(3) AWARDING REPRESENTATIVE ENHANCEMENT AWARDS; AND,
(4) AWARDING REIMBURSEMENT OF SETTLEMENT ADMINISTRATION COSTS

to:

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

on:

April 6, 2022

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


Ryan L. Hicks

EXHIBIT 1

HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738

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.

28 1.2. WHEREAS, Defendants deny the allegations in the Action; denies that they
CLASS ACTION SETTLEMENT AGREEMENT

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

13 1.3. WHEREAS, a bona fide dispute exists as to whether any amount of wages or
14 penalties are due from Defendants to any Settlement Class Members or to the Labor &
15 Workforce Development Agency ("LWDA");

16 1.4. WHEREAS, while litigating the Action, the Parties engaged in substantial
17 discovery, including document requests and interrogatories propounded by Plaintiffs and to
18 which HCAC responded; document requests propounded by HCAC to which Plaintiffs
19 responded; the depositions of Plaintiffs; and the completion of a *Belair* notice process and
20 interviews of putative class members by both sides;

21 1.5. WHEREAS, in preparation for mediation, the Parties also engaged in informal
22 discovery, exchanging information and reviewing and analyzing extensive data made
23 available by HCAC, which enabled Plaintiffs and the mediator to thoroughly evaluate
24 Plaintiffs' claims and the claims of the putative class, and the likely outcomes, risks and
25 expense of pursuing litigation;

26 1.6. WHEREAS, the Parties attended a mediation session via Zoom with
27 professional mediator Tripper Ortman, where the Parties discussed settlement terms at
28 length with the mediator, before agreeing to the terms of this arm's-length Settlement;

1 1.7. WHEREAS, as a result of the mediation, Plaintiffs and Class Counsel believe
2 that the Settlement provides a favorable recovery for the Settlement Class, based on the
3 claims asserted, the evidence developed, and the damages that might be proven against
4 Defendants in the Action. Plaintiffs and Class Counsel further recognize and acknowledge
5 the expense and length of continued proceedings necessary to prosecute the Action against
6 Defendants through trial and appeals. They also have considered the uncertain outcome and
7 the risk of any litigation, especially in complex litigation such as the Action, as well as the
8 difficulties and delays inherent in any such litigation. They are also mindful of the inherent
9 challenges of proof and the strength of the defenses to the alleged claims, and therefore
10 believe that it is desirable that the Released Claims be fully and finally compromised, settled,
11 and resolved with prejudice as set forth herein, subject to the approval of the Court;

12 1.8. WHEREAS, Plaintiffs and Class Counsel, based on their own independent
13 investigations and evaluations, have examined the benefits to be obtained under the terms
14 of this Settlement Agreement, have considered the claims of the Plaintiffs, the claims of the
15 average Settlement Class Member, the risks associated with the continued prosecution of
16 the Action, and the likelihood of success on the merits of the Action, and believe that, after
17 considering all the circumstances, including the uncertainties surrounding the risk of further
18 litigation and the defenses that Defendants have asserted and could assert, the proposed
19 Settlement set forth in this Agreement is fair, reasonable, adequate, in the best interests of
20 Plaintiffs and the Settlement Class, and confers substantial benefits upon the Settlement
21 Class;

22 1.9. WHEREAS, Plaintiffs warrant and represent that they are affecting this
23 Settlement and executing this Agreement after having received full legal advice as to their
24 respective rights and have had the opportunity to obtain independent counsel to review this
25 Agreement;

26 1.10. WHEREAS, the Parties further agree that the Agreement, the fact of this
27 Settlement, and any of the terms of this Agreement, and any documents filed in connection
28 with the Settlement shall not constitute, or be offered, received, claimed, construed, or

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

11 1.11. WHEREAS, for settlement purposes only, HCAC will stipulate to the
12 certification of class claims that are subject to the certification requirements of California
13 Code of Civil Procedure Section 382. Defendants dispute that certification is proper for the
14 purposes of litigating the class claims proposed in or flowing from the claims asserted in the
15 Action;

16 1.12. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
17 AGREED, by the Plaintiffs for themselves and on behalf of the Settlement Class, and by
18 HCAC that, subject to the approval of the Court, the Action shall be settled, compromised,
19 and dismissed, on the merits and with prejudice, and the Released Claims shall be finally
20 and fully compromised, settled and dismissed as to the Released Parties, in the manner and
21 upon the terms and conditions hereafter set forth in this Agreement.

22 2. DEFINITIONS

23 Unless otherwise defined herein, capitalized terms used in this Agreement shall
24 have the meanings set forth below:

25 2.1 "Class Counsel" means Hoyer & Hicks, including individual attorneys Richard
26 A. Hoyer and Ryan L. Hicks.

27 2.2 "Class Counsel Award" means (i) the attorneys' fees for Class Counsel's
28 litigation and resolution of the Action, and all claims resolved by this Settlement, as awarded

1 by the Court, which may not exceed one-third (1/3) of the Total Settlement Amount plus (ii)
2 all expenses and costs incurred by Class Counsel in litigation and resolution of the Action,
3 and all claims resolved by this Settlement, as awarded by the Court.

4 2.3 "Class Information" means information regarding Settlement Class Members
5 that HCAC will in good faith compile from its records and provide to the Settlement
6 Administrator. Class Information shall be provided in a Microsoft Excel spreadsheet and shall
7 include, if possible, for each Settlement Class Member: full name, last-known telephone
8 number, Social Security Number, number of Qualifying Workweeks (during the entire Class
9 Period and also during the PAGA Period, where applicable) and last known address, and in
10 the case of Settlement Class Members who executed an Individual Release on or after March
11 11, 2019 the date of the Release and the payment therefrom. Because Settlement Class
12 Members' private information is included in the Class Information, the Settlement
13 Administrator shall maintain the Class Information in confidence and shall use and disclose
14 Class Information only for purposes of this Settlement and for no other purpose; access shall
15 be limited to the Settlement Administrator personnel with a need to use the Class Information
16 as part of the administration of the Settlement.

17 2.4 "Class Notice" means the notice of class action settlement to be provided to
18 Settlement Class Members, without material variation from the relevant portion of Exhibit 1.

19 2.5 "Court" means Alameda County Superior Court.

20 2.6 "Effective Date" means the first day after the latter of: (a) 60 days after the Court
21 grants Final Approval of the Agreement if no timely appeal is filed; (b) in the event of an timely
22 appeal filed by a Settlement Class Member, the date of final dismissal of any appeal from the
23 Final Order and Final Judgment or the final dismissal of any proceeding on certiorari to review
24 the Final Order and Final Judgment.

25 2.7 "Exclusion/Objection Deadline" means the final date by which a Settlement
26 Class Member may either (i) submit an objection to any aspect of the Settlement, or (ii)
27 request to be excluded from the Settlement (also known as "opting out" of the Settlement).
28 The Exclusion/Objection Deadline shall be forty-five (45) days after the Notice Date, and shall

1 be specifically identified and set forth in the Preliminary Approval Order and the Class Notice.

2 2.8 "Final Approval" means the Court's entry of a Final Approval order finally
3 approving this Settlement.

4 2.9 "Final Approval Hearing" means the hearing at or after which the Court will
5 make a final decision as to whether the Settlement is fair, reasonable, and adequate, and
6 therefore, finally approved by the Court.

7 2.10 "Individual PAGA Payment" means the amount payable from the PAGA
8 Settlement Amount to each Settlement Class Member. The Individual PAGA Payment shall
9 be calculated pursuant to Section 5 herein.

10 2.11 "Individual Settlement Payment" means the amount payable from the Net
11 Settlement Fund to each Participating Class Member. The Individual Settlement Payment
12 shall be calculated pursuant to Section 5 herein.

13 2.12 "Individual Release" means any agreement entered into between the Released
14 Parties and Settlement Class Members that released, waived, or relinquished for
15 consideration any of the claims that would be covered by the Participating Class Members'
16 Released Claims as defined in Paragraph 2.25.

17 2.13 "Judgment" means the judgment to be entered in the Action on Final Approval
18 of this Settlement.

19 2.14 "Legally Authorized Representatives" means an administrator/administratrix,
20 personal representative, or executor/executrix of a deceased Settlement Class Member's
21 estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member;
22 or any other legally appointed person responsible for handling the business affairs of a
23 Settlement Class Member.

24 2.15 "Named Plaintiffs' General Released Claims" means any and all past, present,
25 and future claims, actions, demands, causes of action, suits, debts, obligations, damages,
26 rights or liabilities, of any nature and description whatsoever, known or unknown, existing or
27 potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of
28 recovery (including but not limited to those based in contract or tort, common law or equity,

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

24 2.16 "Net Settlement Fund" means the portion of the Total Settlement Amount to be
25 distributed to Settlement Class members after the payment by the Settlement Administrator
26 of the Class Counsel award, Settlement Administrator Expenses, PAGA Settlement Amount,
27 and Service Awards.

1 2.17 “Notice Date” means the date of the initial distribution of the Class Notice to
2 Settlement Class Members, as set forth in Section 6.

3 2.18 “Opt Out List” means the Court-approved list of all persons who timely and
4 properly request exclusion from the Settlement Class.

5 2.19 “PAGA Claims” means the Plaintiffs’ representative claims seeking penalties
6 pursuant to PAGA, as alleged in the Complaint to the fullest extent permitted by law.

7 2.20 “PAGA Settlement Amount” means a total payment of \$150,000 to settle all
8 claims under the PAGA. From this amount, 75% will be paid to the LWDA for civil penalties
9 pursuant to the PAGA and 25% (\$37,500) will be distributed *pro rata* to the Settlement Class
10 Members who worked during the PAGA Period (regardless of whether they opt out of this
11 Settlement) and considered penalties for tax reporting purposes.

12 2.21 “PAGA Period” is the time period from March 11, 2019 through the date of
13 Preliminary Approval.

14 2.22 “PAGA-Period Releasee” means any Settlement Class Member who entered
15 into a settlement or release of any of the claims covered by this Settlement between March
16 11, 2019 and March 10, 2020.

17 2.23 “PAGA Workweek” is any calendar week during the PAGA Period in which the
18 Settlement Class Member was actively employed as a CCM and/or SM.

19 2.24 “Participating Class Members” are those Settlement Class Members whose
20 names do not appear on the Opt-Out List.

21 2.25 “Participating Class Members’ Released Claims” means all claims under state,
22 federal and local law arising out of the allegations made in the Action, and that reasonably
23 arise or could have arisen out of the facts alleged in the Action as to all Class Members during
24 the time they worked for Defendant as a non-lead CCM and/or SM within California, including
25 California Labor Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3,
26 226.7, 256, 500, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
27 2698, 2699, 2699.3, 2699.5, 2926, 2927, California Industrial Commission Wage Orders, Cal.
28 Code Regs., tit. 8, section 11040, *et seq.*, Business and Professions Code section 17200, et

1 seq., and all class claims, representative claims, aggrieved employee claims, meal or rest
2 periods, meal or rest period premiums, unpaid wages, overtime, double time, minimum
3 wages, regular rate of pay, timely and complete payment of wages at separation, failure to
4 provide accurate and itemized wage statements, failure to maintain accurate payroll records,
5 unfair competition, unfair business practices, unlawful business practices, fraudulent
6 business practices, PAGA penalties, waiting-time penalties, civil penalties, penalties of any
7 nature, interest, fees, costs, failure to pay additional 401(k) or employee stock option plan
8 benefits and/or deferred compensation benefits and/or matching benefits for payments
9 received under the Settlement, and any other claims alleged in the Action through the
10 Release Period.

11 2.26 "Plaintiffs" means Margaret Rivera, Kay Manaligod, and Christine Atencio.

12 2.27 "Plan of Allocation" means the plan for allocating the Total Settlement Amount
13 between and among Settlement Class Members as approved by the Court.

14 2.28 "Post-Filing Releasee" means any Settlement Class Member who entered into
15 a settlement or release of any of the claims covered by this Settlement between March 11,
16 2020 and the date of Preliminary Approval.

17 2.29 "Preliminary Approval Date" means the date that the Court enters the
18 Preliminary Approval Order and thus: (i) preliminarily approves the Settlement, and the
19 exhibit(s) thereto, and (ii) enters an order providing for notice to the Settlement Class, an
20 opportunity to opt out of the Settlement Class, an opportunity to submit timely and proper
21 objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement,
22 including approval of the Class Counsel Award.

23 2.30 "Preliminary Approval Order" means the order that Plaintiffs and HCAC will
24 seek from the Court granting preliminary approval to the Settlement Agreement. Entry of the
25 Preliminary Approval Order shall constitute preliminary approval of the Settlement
26 Agreement.

27 2.31 "Qualifying Workweek" is any calendar week during the Class Period in which
28 the Settlement Class Member was actively employed as a CCM and/or SM.

1 2.32 “Release Period” means March 11, 2016 through the Preliminary Approval
2 Date.

3 2.33 “Released Claims” means (i) Participating Class Members’ Released Claims
4 and (ii) Named Plaintiffs’ General Released Claims.

5 2.34 “Released Parties” means (i) Defendant HCAC, (ii) HCAC’s past, present, and
6 future parents, subsidiaries and affiliates including without limitation any corporation, limited
7 liability company, partnership, trust, foundation and non-profit entity which controls, is
8 controlled by, or is under common control with HCAC; (iii) the other corporate Defendants in
9 this matter – Home Care Assistance, Inc., Home Care Assistance, LLC, Home Care
10 Assistance Management, LLC, and Home Care Assistance Holdings, LLC, (iv) the past and
11 present shareholders, directors, officers, agents, employees, members, consultants, benefit
12 plans, successor and assigns of any of the foregoing; and (v) any individual or entity that
13 could be jointly liable with any of the foregoing.

14 2.35 “Service Award” means the amount approved by the Court to be paid to each
15 Plaintiff, in addition to their respective Individual Settlement Payment, in recognition of their
16 efforts in coming forward as named plaintiffs and as consideration for a full, general, and
17 comprehensive release of the Named Plaintiffs’ General Released Claims. The Service
18 Award amount payable to Plaintiffs is not to exceed \$15,000, for each of the three individuals,
19 for a total of \$45,000.

20 2.36 “Settlement” means the settlement of the Action between and among Plaintiffs
21 and HCAC, as set forth in this Settlement Agreement.

22 2.37 “Settlement Administrator” means the administrator mutually agreed upon by
23 the Parties and subsequently approved and/or designated by the Court. If the Parties cannot
24 agree upon a Settlement Administrator, the Court shall choose between competing proposals
25 made by the Parties.

26 2.38 “Settlement Administrator Expenses” means the amount to be paid to the
27 Settlement Administrator exclusively from the Total Settlement Amount, including the total
28 costs, expenses, and fees of the Settlement Administrator. The amount will be based on a

1 “not-to-exceed” quote for settlement administration. If the Settlement Administrator’s
2 expenses are less than the quoted amount, the balance of such funds shall be included in
3 the amount to be distributed to the Settlement Class pursuant to paragraph 10.2.5.

4 2.39 “Settlement Class” means all individuals who were employed by HCAC in
5 California in the position of non-Lead Client Care Manager or non-Lead Staffing Manager or
6 a combination of both positions from March 11, 2016 through the date of Preliminary
7 Approval. The Settlement Class does not include any person who settled or released any of
8 the claims covered by this Settlement prior to March 11, 2019, or any other person who
9 previously was paid or received awards through civil or administrative actions for the claims
10 covered by this Settlement.

11 2.40 “Settlement Class Member” means any member of the Settlement Class.

12 2.41 “Settlement Class Period” means March 11, 2016, through the Preliminary
13 Approval Date.

14 2.42 “Total Settlement Amount” means Two Million Two-Hundred-Fifty Thousand
15 dollars (\$2,250,000) for payment of all claims, which is the maximum amount that HCAC is
16 obligated to pay under this Settlement Agreement under any circumstances (except if the
17 escalator provision of Paragraph 11.2 is triggered) in order to resolve and settle the Action,
18 subject to Court approval. The Total Settlement Amount includes all costs and fees,
19 including, but not limited to, the Class Counsel Award, Settlement Administrator Expenses,
20 escrow costs and expenses, Service Award, PAGA Settlement Amount, interest, and
21 employee payroll taxes.

22 2.43 “Void Date” means the date by which any checks issued to Settlement Class
23 Members shall become void, i.e. on the 91st day after mailing.

24 **3. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE**
25 **COURT FOR PRELIMINARY AND FINAL APPROVAL**

26 3.1 Upon execution of this Settlement Agreement, the Plaintiffs shall submit to the
27 Court a motion for preliminary approval of the Settlement. The motion for preliminary
28 approval shall include a proposed plan for sending the Class Notice to Settlement Class

1 Members within twenty-eight (28) days after the Preliminary Approval Date (the Notice Date),
2 and establishing a period of forty-five (45) days from the Notice Date within which any
3 Settlement Class Member may (i) request exclusion from the Settlement Class, (ii) object to
4 the proposed Settlement, or (iii) object to Class Counsel's request for the Class Counsel
5 Award and for the Service Award to the Plaintiff (the Exclusion/Objection Deadline).

6 3.2 The Parties stipulate to certification under California Code of Civil Procedure
7 Section 382, for settlement purposes only, of the Settlement Class, excluding the Settlement
8 Class's PAGA Claims. The Parties agree that this stipulation shall not be admissible in, and
9 may not be used by any person for any purpose whatsoever in any legal proceeding,
10 including but not limited to any arbitrations and/or any civil and/or administrative proceedings,
11 other than a proceeding to enforce the terms of the Agreement, as further set forth in this
12 Agreement.

13 3.3 The Parties stipulate to the form of, and agree to submit to the Court for its
14 consideration this Settlement Agreement, and the following Exhibit to this Settlement
15 Agreement: Class Notice (Exhibit 1).

16 3.4 Solely for purposes of implementing this Agreement and effectuating the
17 proposed Settlement, the Parties agree and stipulate that:

18 3.4.1 The Court may enter the Preliminary Approval Order, preliminarily
19 approving the Settlement and this Agreement. Among other things, the Preliminary
20 Approval Order shall grant leave to preliminarily certify the Settlement Class for
21 settlement purposes only; approve the Plaintiffs as class representatives, appoint
22 Class Counsel to represent the Settlement Class, and appoint the Settlement
23 Administrator; approve the Class Notice, and the class notice plan embodied in the
24 Settlement Agreement, and approve them as consistent with California Rules of Court
25 3.766(d) and 3.769(f) and due process; set out the requirements for disputing the
26 information upon which Settlement Class Members' share of the Settlement will be
27 calculated, objecting to the Settlement, excluding Settlement Class Members who
28 timely and properly request to be excluded from the Settlement Class, all as provided

1 in this Agreement; and provide that certification and all actions associated with
2 certification are undertaken on the condition that the certification and other actions
3 shall be automatically vacated and of no force or evidentiary effect if this Agreement
4 is terminated or disapproved, as provided in this Agreement.

5 3.5 Class Counsel will submit to the LWDA all papers filed by Plaintiffs relating to
6 the preliminary approval of this Agreement within two (2) days of the filing of that motion.

7 3.6 At the Final Approval Hearing, the Plaintiffs shall request entry of a Final
8 Approval order and a Judgment, to be agreed upon by the Parties, the entry of which is a
9 material condition of this Settlement and that, among other things:

10 3.6.1 Finally approves the Settlement as fair, reasonable, and adequate and
11 directs its consummation pursuant to the terms of the Settlement Agreement;

12 3.6.2 Finds that Class Counsel and Plaintiffs adequately represented the
13 Settlement Class for the purpose of entering into and implementing the Agreement;

14 3.6.3 Re-confirms the appointment of the Settlement Administrator and finds
15 that the Settlement Administrator has fulfilled its duties under the Settlement to date;

16 3.6.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
17 constituted notice that was reasonably calculated, under the circumstances, to apprise
18 Settlement Class Members of the pendency of the Action, and their right to exclude
19 themselves from or object to the proposed settlement and to appear at the Final
20 Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient
21 notice to all persons entitled to receive notice; and (iv) met all applicable requirements
22 of California Rules of Court 3.766(d) and 3.769(f), due process, and any other
23 applicable rules or law;

24 3.6.5 Approves the Opt-Out List and determines that the Opt-Out List is a
25 complete list of all Settlement Class Members who have timely and properly requested
26 exclusion from the Settlement Class and, accordingly, shall neither share in nor be
27 bound by the Final Approval order and Judgment except to the extent that they will
28 receive a payment from the PAGA allocation if they were employed as a CCM and/or

1 SM during the PAGA Period;

2 3.6.6 Directs that the Final Approval order and Judgment of dismissal shall be
3 final and entered forthwith;

4 3.6.7 Without affecting the finality of the Final Approval order and Judgment,
5 directs that the Court retains continuing jurisdiction over the Plaintiffs, the Settlement
6 Class, and HCAC as to all matters concerning the administration, consummation, and
7 enforcement of this Settlement Agreement;

8 3.6.8 Adjudges that, as of the Final Approval Date, the Plaintiffs, and all
9 Settlement Class Members who have not been excluded from the Settlement Class
10 as provided in the Opt-Out List approved by the Court, and their Legally Authorized
11 Representatives, heirs, estates, trustees, executors, administrators, principals,
12 beneficiaries, representatives, agents, assigns, and successors, and/or anyone
13 claiming through them or acting or purporting to act for them or on their behalf,
14 regardless of whether they have received actual notice of the proposed Settlement,
15 have conclusively compromised, settled, discharged, and released the Named
16 Plaintiffs' General Released Claims (in the case of the Plaintiffs) and Participating
17 Class Members' Released Claims (in the case of the Participating Class Members)
18 against HCAC and the Released Parties, and are bound by the provisions of this
19 Agreement;

20 3.6.9 Affirms that, notwithstanding the submission of a timely and proper
21 request for exclusion, Settlement Class Members will still be bound by the settlement
22 and release of the PAGA Claims or remedies under the Final Judgment pursuant to
23 *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) as requests for exclusion do not apply
24 to the PAGA Claims (and hence will receive a payment from the PAGA Settlement
25 Amount), and further affirms that the LWDA's claims for civil penalties pursuant to
26 PAGA for violations of the Released Claims are also extinguished;

27 3.6.10 Declares this Agreement and the Final Approval order and Judgment to
28 be binding on, and have res judicata and preclusive effect as to all pending and future

1 lawsuits or other proceedings: (i) that encompass the Named Plaintiffs' General
2 Released Claims and that are maintained by or on behalf of the Plaintiffs' and/or their
3 Legally Authorized Representatives, heirs, estates, trustees, executors,
4 administrators, principals, beneficiaries, representatives, agents, assigns, and
5 successors, and/or anyone claiming through them or acting or purporting to act for
6 them or on their behalf, and (ii) that encompass the Participating Class Members'
7 Released Claims and that are maintained by or on behalf of any Participating Class
8 Member and/or his or her Legally Authorized Representatives, heirs, estates, trustees,
9 executors, administrators, principals, beneficiaries, representatives, agents, assigns,
10 and successors, and/or anyone claiming through them or acting or purporting to act
11 for them or on their behalf, regardless of whether the Settlement Class Member
12 previously initiated or subsequently initiates individual litigation or other proceedings
13 encompassed by the Participating Class Members' Released Claims, and even if such
14 Settlement Class Member never received actual notice of the Action or this proposed
15 Settlement;

16 3.6.11 Determines that the Agreement and the Settlement provided for herein,
17 and any proceedings taken pursuant thereto, are not, and should not in any event be
18 offered, received, or construed as evidence of, a presumption, concession, or an
19 admission by any party of liability or non-liability or of the certifiability or non-
20 certifiability of a litigation class, or that PAGA representative claims may validly be
21 pursued, or of any misrepresentation or omission in any statement or written document
22 approved or made by any Party; provided, however, that reference may be made to
23 this Agreement and the Settlement provided for herein in such proceedings as may
24 be necessary to effectuate the provisions of this Agreement, as further set forth in this
25 Agreement;

26 3.6.12 Orders that the preliminary approval of the Settlement, certification of
27 the Settlement Class and final approval of the proposed Settlement, and all actions
28 associated with them, are undertaken on the condition that they shall be vacated if the

1 Settlement Agreement is terminated or disapproved in whole or in part by the Court,
2 or any appellate court and/or other court of review, in which event the Agreement and
3 the fact that it was entered into shall not be offered, received, or construed as an
4 admission or as evidence for any purpose, including but not limited to an admission
5 by any Party of liability or non-liability or of any misrepresentation or omission in any
6 statement or written document approved or made by any Party, or of the certifiability
7 of a litigation class or the appropriateness of maintaining a PAGA representative
8 action, as further provided in this Settlement Agreement;

9 3.6.13 Authorizes the Parties, without further approval from the Court, to agree
10 to and adopt such amendments, modifications, and expansions of this Agreement,
11 including all Exhibits hereto, as (i) shall be consistent in all material respects with the
12 Final Approval order and (ii) do not limit the rights of Settlement Class Members; and

13 3.6.14 Contains such other and further provisions consistent with the terms of
14 this Settlement Agreement to which the Parties expressly consent in writing.

15 3.7 At the Final Approval Hearing and as a part of the final approval of this
16 Settlement, Class Counsel will also request approval of the Plan of Allocation set forth in
17 Section V. Any modification to the Plan of Allocation by the Court shall not (i) affect the
18 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
19 terminate the Settlement Agreement, or (iii) impose any obligation on the Defendants or any
20 Released Party to increase the consideration paid in connection with the Settlement (apart
21 from the escalator provision at Paragraph 11.2 of this Settlement, if triggered).

22 3.8 At the Final Approval Hearing, Class Counsel may also request entry of an
23 Order approving the Class Counsel Award and the Service Award to the Plaintiffs, which shall
24 be paid exclusively from the Total Settlement Amount and in accordance with the distribution
25 plan described in Section 5. In no event shall any Released Party otherwise be obligated to
26 pay for any attorneys' fees and expenses or Service Award. The disposition of Class
27 Counsel's application for a Class Counsel Award, and for the Service Award, is within the
28 sound discretion of the Court and is not a material term of this Settlement Agreement, and it

1 is not a condition of this Settlement Agreement that such application be granted. Any
2 disapproval or modification of such application by the Court shall not (i) affect the
3 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
4 terminate the Settlement Agreement, or (iii) increase the consideration Defendants or any
5 Released Party pays in connection with the Settlement. Released Parties shall have no
6 liability to Class Counsel arising from any claim regarding the division of the Class Counsel
7 Award between and among Class Counsel or any other counsel representing Plaintiffs or the
8 Settlement Class Members.

9 3.9 In no event shall HCAC or any Released Party be obligated to pay Settlement
10 Administration Expenses beyond those provided for in this Agreement.

11 3.10 Within 10 days after entry of Judgment, Class Counsel will submit a copy of the
12 Judgment to the LWDA.

13 4. SETTLEMENT CONSIDERATION

14 4.1 The total consideration for the Settlement from HCAC is the Total Settlement
15 Amount (\$2,250,000). This is an “all in” number that includes, without limitation, all monetary
16 benefits and payments to the Settlement Class, Service Award, Class Counsel Award,
17 Settlement Administrator Expenses and the PAGA Settlement Amount, and all claims for
18 interest, fees, and costs. Except as set forth in this paragraph 4.1, under no circumstances
19 shall HCAC be required to pay anything more than the Total Settlement Amount, unless the
20 escalator provision at Paragraph 11.2 is triggered. In no event shall HCAC be liable for
21 making any payments under this Settlement, or for providing any relief to Settlement Class
22 Members, before the deadlines set forth in this Agreement. The Parties agree that the entire
23 amount of the Net Settlement Fund, less the employee’s share of applicable payroll taxes,
24 shall be distributed to Participating Class Members. HCAC will be separately responsible for
25 the employer’s share of payroll taxes, which is not included within the Total Settlement
26 Amount.

27 4.2 The Plaintiffs and all Participating Class Members expressly acknowledge that
28 the Individual Settlement Payment they receive shall be characterized as follows: i) one-third

1 (1/3) of such payments shall be considered non-wage alleged unpaid penalties for which an
2 IRS Form 1099 will be issued, if required; ii) one-third (1/3) shall be considered non-wage
3 alleged unpaid interest for which an IRS Form 1099 will be issued, if required; and iii) one-
4 third (1/3) shall be considered wages for which an IRS Form W-2 shall be issued. Individual
5 PAGA Payments made to Settlement Class Members will be designated as alleged unpaid
6 penalties in their entirety, for which an IRS Form 1099 will be issued, if required.

7 4.3 HCAC agrees not to oppose a request for the Service Award for Plaintiffs, as
8 awarded by the Court, up to a maximum of \$15,000 for each named Plaintiff. The Plaintiff
9 and Class Counsel agree not to seek a Service Award in excess of the above amount.

10 4.4 Class Counsel agrees not to seek an award of attorneys' fees, costs and
11 expenses from the Court in excess of one third (1/3) of the Total Settlement Amount plus
12 reasonable costs incurred. HCAC agrees not to oppose a request for attorneys' fees for up
13 to one third (1/3) of the Total Settlement Amount, plus reasonable costs. Any amount
14 awarded as the Class Counsel Award shall be inclusive of any and all amounts due to or
15 claimed by any and all counsel representing Plaintiffs. Released Parties and Settlement
16 Class Members shall have no obligation regarding or liability for allocation or payment of the
17 Class Counsel Award.

18 4.5 The Settlement Administrator shall pay the Class Counsel Award by check, wire
19 transfer, or other method agreed upon by Class Counsel, payable to "Hoyer & Hicks." Class
20 Counsel shall provide the Settlement Administrator notice of receipt of the Class Counsel
21 Award. Released Parties shall have no liability to Class Counsel or any other counsel for
22 Plaintiffs or any Settlement Class Member arising from any claim regarding the division of
23 the Class Counsel Award.

24 5. FUNDING AND ALLOCATION OF THE SETTLEMENT

25 5.1 Within fourteen (14) calendar days of the Effective Date, HCAC shall provide
26 the Total Settlement Amount (\$2,250,000) to the Settlement Administrator.

27 5.2 Within seven (7) calendar days of receipt of the Total Settlement Amount from
28 HCA, the Settlement Administrator will effectuate the payments of the Class Counsel Award,

1 the PAGA Payment, the Service Awards, the Settlement Administrator Expenses, and all of
2 the payments to Settlement Class Members.

3 5.3 Participating Class Members are eligible to receive both an Individual
4 Settlement Payment and an Individual PAGA Payment. Settlement Class Members whose
5 names appear on the Opt-Out List are only eligible to receive an Individual PAGA Payment
6 (if they worked any PAGA Workweeks). Each Participating Class Member's Individual
7 Settlement Payment will be distributed from the Net Settlement Fund and calculated in
8 proportion to HCAC's best estimate of each Participating Class Member's total weeks actively
9 employed during the Settlement Class Period (see Paragraph 2.35 above) as a non-Lead
10 CCM and/or non-Lead SM for HCAC in California, as determined from the Class Information
11 provided to the Settlement Administrator by HCAC. Class Counsel will be permitted to review
12 and approve the calculation of settlement funds to be distributed.

13 5.4 In order to account for Participating Class Members who are also Post-Filing
14 Releasees, Post-Filing Releasees will receive an Individual PAGA Payment plus an
15 Individual Settlement Payment that reflects the difference between what the individual's
16 payment would have been but for the prior settlement agreement/release and the gross
17 payment the individual received as a result of signing the Post-Filing Release. For the
18 avoidance of doubt, if a Post-Filing Releasee was paid \$5,000 in exchange for a severance
19 agreement, his or her Individual Settlement Payment under this agreement will be \$5,000
20 less than it would have been in the absence of the prior severance agreement. The amount
21 of the offset (i.e. \$5,000 in the example) will be distributed among those Participating Class
22 Members who are not Post-Filing Releasees. Any Participating Class Member for whom the
23 calculation described in this paragraph results in a \$0 or negative Individual Settlement
24 Payment will receive no Individual Settlement Payment, but will nonetheless be bound by the
25 Participating Class Member Release.

26 5.5 Individual PAGA Payments from the 25% of the PAGA Settlement Amount will
27 be made to all Settlement Class Members who worked any PAGA Workweeks. The amount
28 of each Individual PAGA Payment will be calculated in proportion to HCAC's best estimate

1 of each Settlement Class Member's total PAGA Workweeks worked as compared to the total
2 number of PAGA Workweeks worked by all Settlement Class Members.

3 5.6 Following the first distribution of the Individual Settlement Payments to
4 Settlement Class Members, all funds not claimed prior to the Void Date (i.e. all funds from
5 uncashed checks) will be distributed to the cy pres beneficiary of the Settlement as described
6 in paragraph 10.3.

7 5.7 As described in Section 6, each Settlement Class Member will have the
8 opportunity, should he or she disagree with HCAC's calculation of his or her work weeks, to
9 provide documentation to establish the appropriate number. There will be a presumption that
10 HCAC's records are correct, absent evidence produced by a Settlement Class Member to
11 the contrary.

12 5.8 The Settlement Administrator shall issue an Individual Settlement Payment to
13 each Participating Class Member, and an Individual PAGA Payment to each Settlement
14 Class Member who worked any PAGA Workweeks. The Individual Settlement Payments
15 shall be reported by the Settlement Administrator to the applicable governmental authorities
16 on IRS Forms 1099 and W-2. The portions allocated to Plaintiffs' Service Award shall be
17 reported on IRS Form 1099 by the Settlement Administrator. The Individual PAGA Payments
18 shall be reported by the Settlement Administrator to the applicable government authorities
19 on IRS Form 1099. The Settlement Administrator shall be responsible for issuing copies of
20 IRS Form W-2 and 1099 for the Plaintiffs and Settlement Class Members.

21 **6. CLASS NOTICE PROCEDURES**

22 6.1 No more than fourteen (14) calendar days after entry of the Preliminary
23 Approval Order, HCAC shall provide the Settlement Administrator with the Class Information
24 for purposes of sending the Class Notice to Settlement Class Members.

25 6.2 The Class Notice will include a statement to each Settlement Class Member
26 containing his or her total Qualifying Workweeks being used to calculate the amount of his
27 or her Settlement Payment as described in Paragraphs 5.3 and 5.4, and inform Settlement
28 Class Members of their right to request exclusion from the Settlement, of their right to object

1 to the Settlement, of their right to dispute the information upon which their share of the
2 Settlement will be calculated, and the claims to be released.

3 6.3 As set forth in the Class Notice, Settlement Class Members will be provided
4 forty-five (45) days after their receipt of the Class Notice and accompanying statement to
5 disagree with HCAC's calculation of his or her total Qualifying Workweeks by providing
6 documentation to the Settlement Administrator to show contrary information. The Settlement
7 Administrator shall review any documentation submitted by a Settlement Class Member and
8 consult with the Parties to determine whether an adjustment is warranted. The Settlement
9 Administrator's determination of the amount of any Settlement Class Member's Qualifying
10 Workweeks shall be binding upon the Settlement Class Member and the Parties, and the
11 Settlement Class Members Individual Settlement Payment will be calculated according to the
12 Settlement Administrator's determination. There will be a presumption that HCAC's records
13 are correct, absent evidence produced by a Settlement Class Member to the contrary.

14 6.4 No more than twenty-eight (28) days after entry of the Preliminary Approval
15 Order, provided HCAC timely complied with its obligation in Paragraph 6.1, the Settlement
16 Administrator shall send a copy of the Class Notice by first-class mail to each Settlement
17 Class Member (the Notice Date).

18 6.5 If any Class Notice sent to any potential Settlement Class Member via first-
19 class mail is returned to the Settlement Administrator with a forwarding address, the
20 Settlement Administrator shall forward the postal mailing to that address. For any remaining
21 returned postal mailings, the Settlement Administrator shall make a good-faith search of an
22 appropriate database, as described in Paragraph 6.6, and postal mailings shall be forwarded
23 to any new postal mail address obtained through such a search within five (5) calendar days
24 of receipt and the Exclusion/Objection Deadline for that individual will be forty-five (45) days
25 from the remailing date. In the event that any Class Notice is returned as undeliverable a
26 second time, no further postal mailing shall be required. The Settlement Administrator shall
27 maintain a log detailing the instances Class Notices are returned as undeliverable, and all
28 instances of a remailed Class Notice.

1 6.6 Before any mailing, the Settlement Administrator shall make a good-faith
2 attempt to obtain the most-current names and postal mail addresses for all potential
3 Settlement Class Members to receive such postal mail, including cross-checking the names
4 and/or postal mail addresses it received from HCAC, as well as any other sources, with
5 appropriate databases and “skip tracing” (e.g., the National Change of Address Database)
6 and performing further reasonable searches (e.g., through Lexis/Nexis) for more-current
7 names and/or postal mail addresses for Settlement Class Members. All Settlement Class
8 Members’ names and postal mail addresses obtained through these sources shall be
9 protected as confidential and not used for purposes other than the notice and administration
10 of this Settlement. The Settlement Administrator shall exercise its best judgment to
11 determine the current mailing address for each Settlement Class Member. The address
12 determined by the Settlement Administrator as the current mailing address shall be presumed
13 to be the best mailing address for each Settlement Class Member.

14 6.7 The number and manner of any reminder to be sent to the Settlement Class
15 Members, beyond that described in Paragraph 6.4, following the initial Class Notice mailing
16 is to be determined by Class Counsel and the Settlement Administrator; *provided* that
17 counsel for HCAC shall be given advance notice of the intention to send out any additional
18 reminder along with the right to provide input to Class Counsel and the Settlement
19 Administrator about the content of same.

20 6.8 The Parties agree that the procedures set forth in this Section constitute
21 reasonable and the best practicable notice under the circumstances and an appropriate and
22 sufficient effort to locate current addresses for Settlement Class Members such that no
23 additional efforts to do so shall be required.

24 6.9 The Settlement Administrator will provide Class Notice by, at a minimum, (i)
25 first-class mail notice without material variation from the form attached as the relevant portion
26 of Exhibit 1. The Class Notice shall comply with California Rules of Court 3.766(d), 3.769(f)
27 and due process.

1 6.10 At least twenty-one (21) days before the Final Approval Hearing, the Settlement
2 Administrator shall prepare a declaration of due diligence and proof of dissemination with
3 regard to the mailing of the Class Notice, and any attempts by the Settlement Administrator
4 to locate Settlement Class Members, its receipt of valid requests for exclusion, and its inability
5 to deliver the Class Notice to Settlement Class Members due to invalid addresses (“Due
6 Diligence Declaration”), to Class Counsel and counsel for HCAC for presentation to the
7 Court. Class Counsel shall be responsible for filing the Due Diligence Declaration with the
8 Court.

9 6.11 If any individual whose name does not appear in the Class Information that
10 HCAC provides the Settlement Administrator (and who has not previously opted out of the
11 Settlement Class), believes that he or she is a Settlement Class Member, he or she shall
12 have the opportunity to dispute his or her exclusion from the Settlement Class. If an individual
13 believes he or she is a Settlement Class Member, he or she must notify the Settlement
14 Administrator within 45 days of the Notice Date. The Parties will meet and confer regarding
15 any such individuals in an attempt to reach an agreement as to whether any such individual
16 should be regarded as a Settlement Class Member. If the Parties so agree, the Settlement
17 Administrator will mail a Class Notice to the individual and treat the individual as a Settlement
18 Class Member for all other purposes. Such an individual will have the same rights as any
19 other Settlement Class Member under this Agreement. In the event that the disbursement
20 of the Individual Settlement Payments and/or Individual PAGA Payments has begun (in
21 accordance with this Settlement Agreement) at the time that the Parties agree that such
22 individual should be regarded as a Settlement Class Member and that such individual does
23 not exercise his or her right to opt out of the Settlement, the Individual Settlement Payment
24 and/or Individual PAGA Payment to such individual shall be disbursed from funds remitted
25 back to the Total Settlement Amount (i.e. from settlement checks that remain uncashed
26 beyond the Void Date).

27 6.12 Defendants shall not retaliate in any manner against any Settlement Class
28 Member who participates in the settlement or challenges their Class Member status.

1 **7. PROCEDURES FOR EXCLUSION**

2 7.1 Settlement Class Members (with the exception of the Plaintiffs) may opt out of
3 the Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement
4 Class must submit timely, written requests for exclusion. To be effective, such a request must
5 include the Settlement Class Member’s name, address, last four digits of Social Security
6 Number, and telephone number; a clear and unequivocal statement that the Settlement Class
7 Member wishes to be excluded from the Settlement Class; and the signature of the
8 Settlement Class Member or the Legally Authorized Representative of the Settlement Class
9 Member. The request must be mailed to the Settlement Administrator at the address provided
10 in the Class Notice and must be postmarked no later than the Exclusion/Objection Deadline
11 (or within forty-five (45) days of the date a Class Notice was remailed to an updated address).
12 The date of the postmark shall be the exclusive means used to determine whether a request
13 for exclusion has been timely submitted. Requests for exclusion must be exercised
14 individually by the Settlement Class Member. Attempted collective group, class, or subclass
15 requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.
16 Individual exclusion requests may be submitted by a Settlement Class Member’s Legally
17 Authorized Representative.

18 7.2 The Settlement Administrator shall promptly log each request for exclusion that
19 it receives and provide copies of the log and all such requests for exclusion to Class Counsel
20 and counsel for HCA, as requested.

21 7.3 The Settlement Administrator shall prepare a list of all persons who timely and
22 properly requested exclusion from the Settlement Class (the Opt-Out List) and shall, before
23 the Final Approval Hearing, provide a declaration to Class Counsel attesting to the accuracy
24 of the list. Class Counsel shall submit the declaration to the Court.

25 7.4 All Settlement Class Members who are not included in the Opt-Out List
26 approved by the Court shall be bound by this Agreement, and all their claims shall be
27 dismissed with prejudice and released as provided for herein, even if they never received
28 actual notice of the Action or this proposed Settlement.

1 7.5 The Settlement Administrator, in its sole discretion, shall determine whether a
2 request for exclusion was timely and properly submitted. The Settlement Administrator's
3 decision shall be final, binding, and nonappealable.

4 7.6 The Plaintiffs agree not to request exclusion from the Settlement Class.

5 7.7 Settlement Class Members may object to or opt out of the Settlement, but may
6 not do both. Any Settlement Class Member who submits a timely and proper request for
7 exclusion may not file an objection to the Settlement or receive an Individual Settlement
8 Payment, and shall be deemed to have waived any rights or benefits under the Settlement
9 Agreement, other than the possible right to an Individual PAGA Payment. If a Settlement
10 Class Member files both an objection and a valid and timely request for exclusion, the request
11 for exclusion will override the objection, and the objection shall therefore be ignored.

12 7.8 Notwithstanding the submission of a timely request for exclusion, Settlement
13 Class Members will still be bound by the settlement and release of the PAGA Claims or
14 remedies under the Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969
15 (2009). Requests for exclusion do not apply to the PAGA Claims, and will not be effective to
16 preclude the release of the PAGA Claims, and a Settlement Class Member who opts out of
17 the Settlement will only opt out of class relief, and will still be entitled to a *pro rata* share of
18 the PAGA allocation if they worked any PAGA Workweeks.

19 7.9 No later than ten (10) business days after the Exclusion/Objection Deadline,
20 the Settlement Administrator shall provide to Class Counsel and counsel for HCAC the Opt-
21 Out List together with copies of the opt-out requests. Notwithstanding any other provision of
22 this Settlement Agreement, if (i) more than seven percent (7%) of the total number of
23 Settlement Class Members exercise their right to opt out of the Settlement, or (ii) if any
24 number of Settlement Class Members representing more than seven percent of the total
25 Qualifying Workweeks opts out, HCAC at its sole and absolute discretion may elect to rescind
26 and revoke the entire Settlement Agreement by sending written notice that it revokes the
27 Settlement pursuant to this paragraph to Class Counsel within ten (10) calendar days before
28

1 the Final Approval Hearing. HCAC agrees to pay all of the Settlement Administration
2 Expenses incurred through such date if it exercises this option.

3 7.10 HCAC shall not retaliate in any manner against any Settlement Class Member
4 who excludes himself or herself from the Settlement.

5 **8. PROCEUDRES FOR OBJECTIONS**

6 8.1 Any Settlement Class Member that wishes to object to the fairness,
7 reasonableness, or adequacy of this Agreement or the proposed Settlement may provide to
8 the Settlement Administrator (who shall forward it to Class Counsel and counsel for HCAC),
9 a timely statement of the objection.

10 8.2 To be timely, an objection must be mailed to the Settlement Administrator, and
11 postmarked no later than the Exclusion/Objection Deadline (or in the event the Settlement
12 Class Member received a remailed notice, forty-five (45) days from the remailing date). The
13 date of the postmark on the return-mailing envelope shall be the exclusive means used to
14 determine whether objection has been timely submitted.

15 8.3 An objection must contain at least the following: (i) the objector's full name,
16 address, telephone, last four digits of Social Security Number, and signature; (ii) a clear
17 reference to the Action; and (iii) a statement of the specific legal and factual basis for each
18 objection argument. All objections shall be signed by the objecting Settlement Class Member
19 (or his Legally Authorized Representative), or by counsel if the Settlement Class Member
20 has retained same.

21 8.4 Individual objections may be submitted by a Settlement Class Member's
22 Legally Authorized Representative or by his or her counsel.

23 8.5 Any Settlement Class Member who does not file a timely objection in
24 accordance with this Section may still orally object at the Final Approval Hearing (by following
25 the Court's procedures in effect at that time for making telephonic or videoconference
26 appearances or by any other method approved by the Court if in person appearances remain
27 prohibited) to any term in the proposed Settlement whatsoever. Settlement Class Members
28 who object to the proposed Settlement shall remain Settlement Class Members, and shall be

1 deemed to have voluntarily waived their right to pursue an independent remedy against
2 HCAC and the Released Parties. As stated in the Class Notice, Class Counsel and/or the
3 Clerk of Court will provide information regarding how an objector may appear via telephone
4 or videoconference, to any Settlement Class Member who indicates an intention to appear
5 via such means prior to the Final Approval Hearing.

6 8.6 To the extent any Settlement Class Member objects to the proposed
7 Settlement, and such objection is overruled in whole or in part, such Settlement Class
8 Member will be forever bound by the Final Approval order and Judgment.

9 8.7 It shall be Class Counsel's sole responsibility to respond to any objections
10 made with respect to any application for the Class Counsel Award and Service Award.

11 8.8 HCAC shall not retaliate in any manner against any Settlement Class Member
12 who objects to the settlement.

13 9. RELEASES

14 9.1 The Released Claims against each and all of the Released Parties shall be
15 released and dismissed with prejudice and on the merits (without an award of costs to any
16 party other than as provided in this Agreement) upon entry of the Final Approval order and
17 Judgment.

18 9.2 As of the Final Approval Date, the Plaintiffs, and all Participating Class
19 Members, individually and on behalf of their Legally Authorized Representatives, heirs,
20 estates, trustees, executors, administrators, representatives, agents, successors, and
21 assigns, and anyone claiming through them or acting or purporting to act on their behalf,
22 agree to forever release, discharge, hold harmless, and covenant not to sue each and all of
23 the Released Parties from each and all of the Named Plaintiffs' General Released Claims (in
24 the case of the Plaintiffs) and the Participating Class Members' Released Claims (in the case
25 of the Participating Class Members), and by operation of the Final Judgment shall have fully
26 and finally released, relinquished, and discharged all such claims against each and all of the
27 Released Parties; and they further agree that they shall not now or hereafter initiate, maintain,
28 or assert any Named Plaintiffs' General Released Claims (in the case of Plaintiffs) and any

1 Participating Class Members' Released Claims (in the case of the Participating Class
2 Members), against the Released Parties in any other court action or before any administrative
3 body, tribunal, arbitration panel, or other adjudicating body. Without in any way limiting the
4 scope of the release described in Paragraphs 2.15 and 2.25, as well as the remainder of this
5 Section, this release covers, without limitation, any and all claims for attorneys' fees, costs or
6 disbursements incurred by Class Counsel or any other counsel representing the Plaintiffs or
7 Settlement Class Members, or by the Plaintiffs or Settlement Class Members, or any of them,
8 in connection with or related in any manner to the Action, the Settlement of the Action, the
9 administration of such Settlement, and/or the Released Claims, except to the extent
10 otherwise specified in the Agreement.

11 9.3 As of the Final Approval Date, the Plaintiffs, and all Participating Class
12 Members, shall be permanently barred and enjoined from initiating, asserting, or prosecuting
13 against the Released Parties in any federal or state court or tribunal any and all Named
14 Plaintiffs' General Released Claims (in the case of Plaintiffs) and any Participating Class
15 Members' Released Claims (in the case of the Participating Class Members, as further
16 provided in Paragraphs 2.15 and 2.25, as well as this Section.

17 9.4 The Named Plaintiffs expressly acknowledge that they are familiar with
18 principles of law such as Section 1542 of the California Civil Code, which provides:

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

23 9.5 With respect to the Named Plaintiffs' General Released Claims, as described
24 in Paragraph 2.15, Plaintiffs shall be deemed to have expressly, knowingly, and voluntarily
25 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
26 benefits they may otherwise have had pursuant to Section 1542 of the California Civil Code
27 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction
28 that may be applicable herein. In connection with the release, the Plaintiffs acknowledge that

1 they are aware that they may hereafter discover claims presently unknown and unsuspected
2 or facts in addition to or different from those which he now knows or believes to be true with
3 respect to matters released herein. Nevertheless, the Plaintiffs acknowledge that a portion
4 of the consideration received herein is for a release with respect to unknown damages and
5 complaints, whether resulting from known injuries and consequences or from unknown
6 injuries or unknown consequences of known or unknown injuries, and states that it is the
7 intention of the Plaintiffs in agreeing to this release to fully, finally, and forever to settle and
8 release all matters and all claims that exist, hereafter may exist, or might have existed
9 (whether or not previously or currently asserted in any action), constituting Named Plaintiffs'
10 General Released Claims.

11 9.6 Plaintiffs further acknowledge, agree, and understand that: (i) they have read
12 and understand the terms of this Agreement; (ii) they have been advised in writing to consult
13 with an attorney before executing this Agreement; and (iii) they have obtained and considered
14 such legal counsel as they deems necessary.

15 9.7 Subject to Court approval, the Plaintiffs, and all other Participating Class
16 Members, shall be bound by this Settlement Agreement, and all of their claims shall be
17 dismissed with prejudice and released, even if they never received actual notice of the Action
18 or this Settlement.

19 9.8 Subject to Court approval, all Settlement Class Members with one or more
20 PAGA Workweeks shall be deemed to have released any claim for civil penalties under
21 PAGA arising out of the allegations made in the Action, and that reasonably arise or could
22 have arisen out of the facts alleged in the Action for the alleged violation of California Labor
23 Code sections 200, 201, 202, 203, 204, 210, 216, 218.5, 225.5, 226, 226.3, 226.7, 256, 500,
24 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699,
25 2699.3, 2699.5, , 2926, 2927, and California Industrial Commission Wage Orders, Cal. Code
26 Regs., tit. 8, section 11040, *et seq*, with regard to all workweeks during which the Settlement
27 Class Member was employed as a CCM or SM in California during the PAGA Period.
28

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

2 10.1 The Settlement Administrator or its authorized agents in consultation with the
3 Parties and subject to the supervision, direction, and approval of the Court, shall calculate
4 the allocation of and oversee the distribution of the Total Settlement Amount.

5 10.2 The Total Settlement Amount shall be applied as follows:

6 10.2.1 To pay the total costs, expenses, and fees of the Settlement
7 Administrator incurred in connection with providing Class Notice to potential
8 Settlement Class Members, and the management and distribution of the Total
9 Settlement Amount to Settlement Class Members, not to exceed a “not to exceed”
10 quote provided to and agreed upon by the Parties (if the Settlement Administrator’s
11 expenses are less than the quoted amount, the balance of such funds shall be
12 included in the amount to be distributed to the Settlement Class pursuant to paragraph
13 10.2.5.)

14 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiffs’
15 Service Award based on contributions and time expended assisting in the litigation,
16 up to a maximum of \$15,000 to each plaintiff;

17 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class
18 Counsel Award (Seven Hundred Fifty Thousand Dollars (\$750,000)), plus reasonable
19 costs incurred as ordered by the Court;

20 10.2.4 Subject to the approval and further order(s) of the Court, to distribute
21 75% of the PAGA Payment to the LWDA and 25% of the PAGA Payment to the
22 Settlement Class Members who worked any PAGA Workweeks as described in
23 Paragraph 5.5 above, with the amount to be distributed to each Settlement Class
24 Member determined proportionately to their PAGA Workweeks worked;

25 10.2.5 After the Effective Date and subject to the approval and further order(s)
26 of the Court, to distribute the Individual Settlement Payments from the Total
27 Settlement Amount for the benefit of the Participating Class Members pursuant to the
28 Plan of Allocation, or as otherwise ordered by the Court.

1 10.3 If after the distribution any portion of the Total Settlement Amount is not
2 successfully redistributed to Settlement Class Members after the Void Date (i.e. checks are
3 not cashed or checks are returned as undeliverable after the distribution), then after the Void
4 Date for redistributed checks, the Settlement Administrator shall void the check and shall
5 direct such unclaimed funds to be paid to the *cy pres* beneficiary of the Settlement as
6 approved by the Court, subject to the requirements of Cal. Code Civ. P. § 384. The parties
7 propose that the Court approve Legal Access Alameda as the *cy pres* beneficiary of this
8 settlement.

9 10.4 Participating Class Members shall be subject to and bound by the provisions of
10 the Settlement Agreement, the releases contained herein, and the Judgment with respect to
11 all Participating Class Members' Released Claims, regardless of whether they obtain any
12 distribution from the Total Settlement Amount.

13 10.5 Payment from the Total Settlement Amount made pursuant to and in the
14 manner set forth herein shall be deemed conclusive of compliance with this Settlement
15 Agreement as to all Settlement Class Members.

16 10.6 No Settlement Class Member shall have any claim against the Plaintiffs, Class
17 Counsel, or the Settlement Administrator based on distributions made substantially in
18 accordance with this Settlement Agreement and/or orders of the Court. No Settlement Class
19 Member shall have any claim against any Released Party or its counsel relating to
20 distributions made under this Settlement.

21 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**
22 **OF SETTLEMENT AGREEMENT**

23 11.1 If the Court does not approve the Settlement as set forth in this Settlement
24 Agreement, or does not enter the Final Approval order and Judgment on the terms described
25 herein, or if the Court enters the Judgment and appellate review is sought, and on such
26 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
27 Approval order does not otherwise become Final, then this Settlement Agreement shall be
28 cancelled and terminated, unless all Parties, in their sole discretion no later than thirty (30)

1 days from the date such ruling becomes Final, provide written notice to all other Parties
2 hereto of their intent to proceed with the Settlement under the terms of the Judgment as it
3 may be modified by the Court or any appellate court.

4 11.2 The Parties agree that this Settlement was reached based on a representation
5 of a total of 26,513 Qualifying Workweeks worked between March 11, 2016 and May 13,
6 2021. The Parties agree that if the Class Information provided to the Settlement Administrator
7 reflects an increase in the number of total Qualifying Workweeks that is more than 10%,
8 HCAC shall have the option of: 1) selecting a new end date for the Class Period that limits
9 the number of Qualifying Workweeks in the Class Information to no more than 110% of
10 26,513; or 2) increasing the Net Settlement Amount proportionately (for any amount over
11 10%. For avoidance of doubt, for example, should the total workweeks be 30,490 (*i.e.*, 15%
12 over the number represented), and should HCAC then choose option 2, above, HCAC would
13 be required to increase the Maximum Settlement Amount in a sum derived by the following
14 formula: $5\% \times \text{Net Settlement Amount}$.

15 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is modified
16 by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement
17 Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the
18 Parties stipulate and agree the Settlement, this Agreement, the Class Information, the Opt-
19 Out List, and all documents exchanged and filed in connection with the Settlement shall be
20 treated as privileged mediation communications under Cal. Evid. Code §§ 1115 et seq.; (b)
21 the Settlement shall be without force and effect upon the rights of the Parties hereto, and
22 none of its terms shall be effective or enforceable, with the exception of this paragraph, which
23 shall remain effective and enforceable; (c) the Parties shall be deemed to have reverted nunc
24 pro tunc to their respective status prior to execution of this Agreement, and will agree to
25 request a status conference to discuss the status of the case and its schedule; (d) all Orders
26 entered in connection with the Settlement, including the certification of the Settlement Class,
27 shall be vacated without prejudice to any Party's position on the issue of class certification,
28 the issue of amending the complaint, or any other issue, in the Action or any other action,

1 and the Parties shall be restored to their litigation positions existing on the date of execution
2 of this Agreement; and (e) the Parties shall proceed in all respects as if the Settlement
3 Agreement and related documentation and orders had not been executed, and without
4 prejudice in any way from the negotiation or fact of the Settlement or the terms of the
5 Settlement Agreement. The Settlement Agreement, the Settlement, all documents, orders,
6 and evidence relating to the Settlement, the fact of their existence, any of their terms, any
7 other statement or report by the Parties or by others concerning the Settlement Agreement,
8 the Settlement, their existence, or their terms, any negotiations, proceedings, acts performed,
9 or documents executed pursuant to or in furtherance of the Settlement Agreement or the
10 Settlement shall not be admissible in any proceeding, and shall not be offered, received, or
11 construed as evidence of a presumption, concession, or an admission of liability, of
12 unenforceability of any arbitration agreement, of the certifiability of a litigation class, or of any
13 misrepresentation or omission in any statement or written document approved or made, or
14 otherwise used by any Person for any purpose whatsoever, in any trial of the Action or any
15 other action or proceedings. Plaintiff, Class Counsel and the Settlement Administrator shall
16 return to counsel for HCAC all copies of Class Information and Opt-Out Lists and shall not
17 use or disclose the Class Information or Opt-Out List for any purpose or in any proceeding.

18 11.4 HCAC does not agree or consent to certification of the Settlement Class for any
19 purpose other than to effectuate the Settlement of the Action. Further, HCAC does not agree
20 or consent that the Action could properly be maintained as a PAGA representative action for
21 any purpose other than to effectuate the Settlement of the Action. If this Settlement
22 Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not
23 occur, all Orders certifying the Settlement Class or establishing the Action as a PAGA
24 representative action for purposes of effecting this Settlement Agreement, and all preliminary
25 and/or final findings regarding the Settlement Class certification order, shall be automatically
26 vacated upon notice to the Court, the Action shall proceed as though the Settlement Class
27 had never been certified pursuant to this Settlement Agreement, had never been maintained
28 as a PAGA representative action, and such findings had never been made, and the Action

1 shall revert nunc pro tunc to the procedural status quo as of the date and time immediately
2 before the execution of the Settlement Agreement, in accordance with this Settlement
3 Agreement.

4 **12. ADDITIONAL PROVISIONS**

5 12.1 All of the Exhibits to this Agreement are an integral part of the Settlement and
6 are incorporated by reference as though fully set forth herein.

7 12.2 The Plaintiffs and Class Counsel acknowledge that an adequate factual record
8 has been established that supports the Settlement and, apart from the limited discovery
9 described in the next sentence, hereby waive any right to conduct further discovery to assess
10 or confirm the Settlement. Notwithstanding the prior sentence, the Parties agree to
11 reasonably cooperate with respect to limited confirmatory discovery to be agreed upon
12 related to the last-known addresses of Settlement Class Members or other matters as may
13 be required by the Court in connection with preliminary and/or final approval.

14 12.3 Unless otherwise noted, all references to “days” in this Agreement shall be to
15 calendar days. In the event any date or deadline set forth in this Agreement falls on a
16 weekend or federal legal holiday, such date or deadline shall be on the first business day
17 thereafter.

18 12.4 Plaintiffs and Class Counsel will not make any public disclosure of this
19 Settlement or the Confidential Memorandum of Understanding that preceded it, except for
20 the filing of pleadings and declarations with the Court in support of preliminary and final
21 approval of the Settlement.

22 12.5 This Agreement constitutes the full and complete agreement of the Parties
23 hereto, and supersedes all prior negotiations and agreements, whether oral, written or
24 otherwise, and may be amended or modified only by a written instrument signed by counsel
25 for all Parties or the Parties’ successors-in-interest.

26 12.6 The Parties reserve the right, subject to the Court’s approval, to make any
27 reasonable extensions of time that might be necessary to carry out any of the provisions of
28 this Agreement. Such extensions must be in writing to be enforceable.

1 12.7 The Settlement Agreement, the Settlement, the fact of the Settlement's
2 existence, any of terms of the Settlement Agreement, any other statement or report by the
3 Parties or by others concerning the Settlement Agreement or the Settlement, and any
4 negotiations, proceedings, acts performed, or documents executed pursuant to or in
5 furtherance of the Settlement Agreement or the Settlement: (i) may not be deemed to be,
6 may not be used as, and do not constitute an admission or evidence of the validity of any
7 Released Claims or of any wrongdoing or liability of Defendants; (ii) may not be deemed to
8 be, may not be used as, and do not constitute an admission or evidence of any fault,
9 wrongdoing, or omission by Defendants in any trial, civil, arbitration, criminal, or
10 administrative proceeding of the Action or any other action or proceedings in any court,
11 administrative agency, arbitration or other tribunal; (iii) may not be used as evidence of any
12 waiver of, unenforceability of, or as a defense to any HCAC arbitration agreement; and (iv)
13 may not be used as evidence on any class certification proceeding.

14 12.8 The Released Parties shall have the right to file the Settlement Agreement, the
15 Final Approval order and Judgment, and any other documents or evidence relating to the
16 Settlement in any action that may be brought against them in order to support a defense or
17 counterclaim based on principles of res judicata, collateral estoppel, release, good-faith
18 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue
19 preclusion or similar defense or counterclaim.

20 12.9 The Parties to the Settlement Agreement agree that the Total Settlement
21 Amount and the other terms of the Settlement were negotiated at arm's length and in good
22 faith by the Parties, assisted by an arm's-length mediation session facilitated by Tripper
23 Ortman, Esq., and reflect a settlement that was reached voluntarily based upon adequate
24 information and sufficient discovery and after consultation with experienced legal counsel.

25 12.10 The Plaintiffs and Class Counsel have concluded that the Settlement set forth
26 herein constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiffs
27 asserted against Defendants, including the claims on behalf of the Settlement Class, and that
28 it promotes the best interests of the Settlement Class.

1 12.11 To the extent permitted by law, all agreements made and orders entered during
2 the course of the Action relating to the confidentiality of information shall survive this
3 Settlement Agreement.

4 12.12 The Parties agree that Plaintiffs and Class Counsel are not required to return
5 any documents produced by HCAC until the final resolution of the Action. Within sixty (60)
6 days following the Effective Date, Class Counsel shall return to HCAC all documents
7 produced in the Action, or confirm in writing that all such documents have been destroyed.

8 12.13 The waiver by one Party of any breach of this Settlement Agreement by any
9 other Party shall not be deemed a waiver of any other prior or subsequent breach of this
10 Settlement Agreement.

11 12.14 This Settlement Agreement, including its Exhibits, constitutes the entire
12 agreement among the Parties, and no representations, warranties, or inducements have
13 been made to any Party concerning this Settlement Agreement or its Exhibit, other than the
14 representations, warranties, and covenants contained and memorialized in this Settlement
15 Agreement and its Exhibits.

16 12.15 This Settlement Agreement may be executed (either manually or electronically)
17 in one or more counterparts. All executed counterparts and each of them shall be deemed to
18 be one and the same instrument provided that counsel for the Parties to this Settlement
19 Agreement shall exchange among themselves original signed counterparts.

20 12.16 The Parties hereto and their respective counsel agree that they will use their
21 best efforts to obtain all necessary approvals of the Court required by this Settlement
22 Agreement.

23 12.17 This Settlement Agreement shall be binding upon and shall inure to the benefit
24 of the successors and assigns of the Parties hereto, including any and all Released Parties
25 and any corporation, partnership, or other entity into or with which any Released Party hereto
26 may merge, consolidate, or reorganize.

27 12.18 This Settlement Agreement shall not be construed more strictly against one
28 Party than another merely because of the fact that it may have been prepared by counsel for

1 one of the Parties, it being recognized that because of the arm's-length negotiations resulting
2 in the Settlement Agreement, all Parties hereto have contributed substantially and materially
3 to the preparation of the Settlement Agreement.

4 12.19 Except where this Settlement Agreement itself provides otherwise, all terms,
5 conditions, and Exhibits are material and necessary to this Settlement Agreement and have
6 been relied upon by the Parties in entering into this Settlement Agreement.

7 12.20 This Settlement Agreement shall be governed by California law. Any action
8 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in
9 Alameda County Superior Court, which shall retain jurisdiction over all such disputes. All
10 Parties to this Settlement Agreement shall be subject to the jurisdiction of Alameda County
11 Superior Court for all purposes related to this Settlement Agreement. This paragraph relates
12 solely to the law governing this Settlement Agreement and any action based thereon, and
13 nothing in this paragraph shall be construed as an admission or finding that California law
14 applies to the Released Claims of any Plaintiffs or Settlement Class Members who reside
15 outside of the state.

16 12.21 The Court shall retain continuing and exclusive jurisdiction over the Parties to
17 this Settlement Agreement for the purpose of the administration and enforcement of this
18 Settlement Agreement.

19 12.22 The headings used in this Settlement Agreement are for the convenience of the
20 reader only, and shall not affect the meaning or interpretation of this Settlement Agreement.

21 12.23 In construing this Settlement Agreement, the use of the singular includes the
22 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

23 12.24 Each Party to this Settlement Agreement warrants that he, she, or it is acting
24 upon his or its independent judgment and upon the advice of his or its counsel, and not in
25 reliance upon any warranty or representation, express or implied, of any nature of any kind
26 by any other Party, other than the warranties and representations expressly made in this
27 Settlement Agreement.

1 Dated: October __, 2021


Margaret Rivera (Oct 21, 2021 10:17 PDT)
MARGARET RIVERA
PLAINTIFF

2
3
4 Dated: October ²¹__, 2021


Kay Alyson (Oct 21, 2021 10:02 PDT)
KAY MANALIGOD
PLAINTIFF

5
6
7
8 Dated: October __, 2021


Christine Atencio (Oct 21, 2021 09:59 PDT)
CHRISTINE ATENCIO
PLAINTIFF

9
10
11
12
13 Dated: October __, 2021

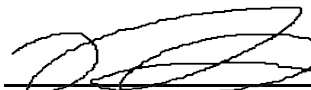

NINA KANI
General Counsel
HOME CARE ASSISTANCE OF
CALIFORNIA, LLC

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 'eCourt,' at <http://eportal.alameda.courts.ca.gov/>. After arriving at the website, click the 'Searches' link, then click the 'Case Number Search' link, then enter RG20058229 as the case number, enter the answer to the simple math question and click 'SEARCH.' Images of every document filed in the case may be viewed (for a charge) through the 'Summary' tab once you have created an account with the service. You can create a public user account at <https://eportal.alameda.courts.ca.gov/?q=user/register>.

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	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

SETTLEMENT PAYMENT	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 \$150,000 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] or date 45 days following re-mail date, if applicable]) 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 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] or date 45 days following re-mail date, if applicable], 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 to object to any term of the settlement, 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 and supporting papers 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] or date 45 days following re-mail date, if applicable]. You must give all reasons why you think the Court should not approve the Settlement. The Court will consider your views. You (or your counsel or other legal representative) must sign the objection and include your full name, address, last four digits of your Social Security, and telephone number(s). You may appear at the Final Approval hearing in person (assuming doing so is consistent with any COVID-related limitations the Court has implemented at that time), via telephone or via videoconference. If you wish to appear at the Final Approval hearing via telephone or videoconference, you must contact Class Counsel (listed above) and the Clerk of the Court at Dept17@alameda.courts.ca.gov and inform them of your intent to appear via telephone or videoconference, and instructions as to how to appear will be provided.

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, you may ask the Court for permission to speak during 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

1 HOYER & HICKS
2 Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
3 Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
4 84 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Tel: (415) 766-3539
Fax: (415) 276-1738
7 Attorneys for Plaintiffs,
8 MARGARET RIVERA, KAY MANALIGOD,
And CHRISTINE ATENCIO

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **ALAMEDA COUNTY**

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

15 Plaintiffs,

16 vs.

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

21 Defendants.
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Case No. RG20058229

ASSIGNED FOR ALL PURPOSES TO
HON. FRANK ROESCH
DEPARTMENT 17

CLASS ACTION

**DECLARATION OF LINDSAY KLINE
REGARDING NOTICE AND
SETTLEMENT ADMINISTRATION**

DECLARATION OF LINDSAY KLINE

I, LINDSAY KLINE, hereby declare:

1. I am employed as a Project Manager by Simpluris, Inc. ("Simpluris"), the claims administrator in the above-entitled action. Our Corporate Office address is 3194-C Airport Loop Dr., Costa Mesa, CA 92626. My telephone number is (714) 640-5635. I am over twenty-one years of age and authorized to make this declaration on behalf of Simpluris and myself.

2. Simpluris is a Class Action Settlement Administration company located in Costa Mesa, California. It was founded by individuals who have each managed hundreds of settlements, along with professionals in the areas of Software Development, Third-Party Claims Administration, Mail-House Operations, and Call Center Support Management.

3. Simpluris was approved by Counsel for Margaret Rivera, Kay Manaligod, and Christine Atencio, ("Plaintiffs"), and Home Care Assistance, Inc., Home Care Assistance Of California, LLC, Home Care Assistance, LLC, Home Care Assistance Management, LLC, Home Care Assistance Holdings LLC, ("Defendants"), (collectively the "Parties"), to provide settlement administration services in the Rivera, et al. v. Home Care Assistance, Inc. et al. case ("Settlement"). In this capacity, Simpluris was charged with (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiffs, Class Counsel and Class Members; (d) printing and mailing the Notice of Class and Representative Action Settlement to Class Members; (e) receiving and validating Requests for Exclusion, Objections or Disputes of work weeks submitted by Class Members; (f) calculating Employer Payroll Taxes and providing appropriate forms and calculations to Defendants; (g) mailing settlement checks, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Simpluris to perform.

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4. A toll-free telephone number was included in the Notice of Class and Representative Action Settlement for the purpose of allowing the Class Members to call Simpluris and to make inquiries regarding the Settlement. The system is accessible 24 hours a day, 7 days a week, and will remain in operation throughout the settlement process. Callers have the option to speak with a live call center representative during normal business hours or to leave a message and receive a return call during non-business hours. Spanish-speaking representatives are available during normal business hours. The toll-free telephone number included in the Notice of Class and Representative Action Settlement was (888) 369-3780 and was live on January 20, 2022.

5. On October 28, 2021, Simpluris received the Court-approved Notice of Class and Representative Action Settlement (hereafter “Notice”). The Notice advised Class Members of their right to request exclusion from the Settlement, object to the Settlement, dispute work weeks, do nothing, and the implications of each such action. The Notice advised Class Members of applicable deadlines and other events, including the Final Approval Hearing, and how Class Members could obtain additional information.

6. On December 14, 2021, Defense Counsel provided Simpluris with a mailing list (“Class List”) containing Class Members’ names, most recent mailing address, Social Security numbers and dates of employment for each Class Member during the Class Period. The Class List contained data for three hundred ninety-three (393) Class Members.

7. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Notice. Simpluris was able to locate seventy-four (74) updated addresses using NCOA prior to the mailing of the Notice.

1 8. On January 20, 2022, Notice was mailed to three hundred ninety-three (393) Class
2 Members with addresses contained in the Class List via First Class mail or updated via the NCOA
3 search. A copy of the Notice is attached hereto as **Exhibit A**.

4 9. A total of twenty-seven (27) Notices were returned to Simpluris. Of these, three (3) were
5 returned with a forwarding address. If a Class Member's Notice was returned by the USPS as
6 undeliverable and without a forwarding address, Simpluris performed an advanced address search (i.e.,
7 skip trace) on all of these addresses by using Accurant, a reputable research tool owned by Lexis-Nexis.
8 Simpluris used the Class Member's name and previous address to locate a current address. Through
9 the advanced address searches, Simpluris was able to locate twenty-five (25) updated address and
10 Simpluris promptly mailed a Notice to the updated address. As of today, there are two (2) Notices that
11 were undeliverable.

12 10. On February 22, 2022, Defense Counsel informed Simpluris that one (1) member was
13 inadvertently omitted from the Class List. Simpluris promptly updated their records and send the
14 Omitted Class Member a Notice. The total number of Class Members was increased to three hundred
15 ninety-four (394).
16

17 **REQUESTS FOR EXCLUSION, OBJECTIONS AND DISPUTES**

18 11. The deadline for Class Members to submit a Request for Exclusion, Object to the
19 Settlement or Dispute work weeks was March 7, 2022. The deadline for Class Members who received a
20 re-mailed Notice to Request Exclusion, Object to the Settlement or Dispute work weeks is April 21,
21 2022.

22 12. As of this date, Simpluris has received one (1) Request for Exclusion from a Class
23 Member.

24 13. As of this date, Simpluris has not received any Objections to the Settlement from Class
25 Members.

26 14. As of this date, Simpluris has not received any Disputes regarding work weeks from
27 Class Members.
28

1 **CLASS MEMBER AWARDS**

2 15. As of this date, there are three hundred ninety-three (393) Class Members who will be
3 paid their portion of the Net Settlement Fund. This does not include the Class Member who Requested
4 Exclusion as that member will not be paid for the PAGA period.

5 16. As of this date, there are two hundred seventy-two (272) Class Members who are also
6 PAGA Members and will receive their portion of the PAGA payment.

7 17. The Net Settlement Fund of \$1,318,141.86 available to pay Class Members was
8 determined by subtracting the Class Counsel's Fees (\$750,000.00), Class Counsel's Litigation Costs
9 (\$16,458.14), Named Plaintiffs Service Awards (\$45,000.00), PAGA LWDA payment (\$112,500.00),
10 and the Administration Costs (\$7,900.00) from the Maximum Settlement Amount (\$2,250,000.00).

11 18. The ***average estimated payment*** is \$3,354.05, the ***highest estimated payment*** is
12 \$14,592.99 and the ***median estimated payment*** is \$2,137.58. The estimated individual settlement
13 payments for Margaret Rivera, Kay Manaligod, and Christine Atencio are \$5,962.65, \$3,825.05 and
14 \$6,261.33, respectively.
15

16 **ADMINISTRATION COSTS**

17 19. Simpluris' total costs for services in connection with the administration of this
18 Settlement, including fees incurred and anticipated future costs for completion of the administration, are
19 \$7,900.00. Simpluris' work in connection with this matter will continue with the calculation of the
20 settlement checks, issuance and mailing of those settlement checks, etc., and to do the necessary tax
21 reporting on such payments.
22

23
24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct. Executed this 1st day of April 2022, in Costa Mesa, CA.

26 
27 _____
28 Lindsay Kline

EXHIBIT A

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.

«IMbFullBarcodeEncoded»

«FirstName» «LastName» «BusinessName»

«Address1» «Address2»

SIMID «SIMID»
«City» «State» «Zip» «ZipDPC3»

«City», «State» «Zip»-«ZipDPC3»

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 www.simpluris.com/case-information. 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 ‘eCourt,’ at <http://eportal.alameda.courts.ca.gov/>. After arriving at the website, click the ‘Searches’ link, then click the ‘Case Number Search’ link, then enter RG20058229 as the case number, enter the answer to the simple math question and click ‘SEARCH.’ Images of every document filed in the case may be viewed (for a charge) through the ‘Summary’ tab once you have created an account with the service. You can create a public user account at <https://eportal.alameda.courts.ca.gov/?q=user/register>.

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 October 28, 2021 (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, <u>you will release all claims asserted in the lawsuit</u> and you will be sent 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 do not cash a settlement check within 90 days, your share of the settlement contained in the uncashed settlement check will be directed to the Court approved <i>cy pres</i> , Legal Access Alameda.
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 393 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 \$150,000 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 October 28, 2021. 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 March 7, 2022) 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 «MERGED_WW» weeks as a non-Lead CCM and/or non-Lead SM in California during the period March 11, 2016 to October 28, 2021 and are projected to receive approximately the following total amount (before tax withholdings):

Estimated Settlement Payment: \$«MERGED_EstSettAmnt_CALC»

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.

Additionally, if you worked during the period of March 11, 2019 through October 28, 2021 (PAGA Period), you will receive an additional payment for your portion of the release of the State's claim for PAGA penalties. Any such payment will be treated entirely as 1099 penalties.

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 October 28, 2021. 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 March 7, 2022, and sent to and received at the following address:

Rivera et al. v. Home Care Assistance, Inc.
c/o Settlement Administrator
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780

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 Court approved *cy pres*, Legal Access Alameda. 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 \$15,000 for settlement administration, will also come from the Total Settlement Amount. \$150,000 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 April 6, 2022 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 www.hoyerlaw.com), 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 to object to any term of the settlement, 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 and supporting papers 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 March 7, 2022. You must give all reasons why you think the Court should not approve the Settlement. The Court will consider your views. You (or your counsel or other legal representative) must sign the objection and include your full name, address, last four digits of your Social Security, and telephone number(s). You may appear at the Final Approval hearing in person (assuming doing so is consistent with any COVID-related limitations the Court has implemented at that time), via telephone or via videoconference. If you wish to appear at the Final Approval hearing via telephone or videoconference, you must contact Class Counsel (listed above) and the Clerk of the Court at Dept17@alameda.courts.ca.gov and inform them of your intent to appear via telephone or videoconference, and instructions as to how to appear will be provided.

Rivera et al. v. Home Care Assistance, Inc.
c/o Settlement Administrator
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780

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 March 7, 2022. 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 April 28, 2022 at 3:30 p.m., at the Superior Court, County of Alameda, 1221 Oak Street, Department 17, 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, you may ask the Court for permission to speak during 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 (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: January 20, 2022

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.

«IMbFullBarcodeEncoded»

«FirstName» «LastName» «BusinessName»

«Address1» «Address2»

SIMID «SIMID»
«City» «State» «Zip» «ZipDPC3»

«City», «State» «Zip»-«ZipDPC3»

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).

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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 ‘eCourt,’ at <http://eportal.alameda.courts.ca.gov/>. After arriving at the website, click the ‘Searches’ link, then click the ‘Case Number Search’ link, then enter RG20058229 as the case number, enter the answer to the simple math question and click ‘SEARCH.’ Images of every document filed in the case may be viewed (for a charge) through the ‘Summary’ tab once you have created an account with the service. You can create a public user account at <https://eportal.alameda.courts.ca.gov/?q=user/register>.

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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 393 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 \$150,000 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 October 28, 2021. 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, **including you**, 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 March 7, 2022) 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 «MERGED_WW» weeks as a non-Lead CCM and/or non-Lead SM in California during the period March 11, 2016 to October 28, 2021 and are projected to receive approximately the following total amount (before tax withholdings):

Defendants’ records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$«MERGED_SeverancePayment». 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: \$«MERGED_ClassAmnt_CALC» plus any PAGA payment owed (see below).

Any payment 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 any payment will be treated as wages, subject to payroll taxes, and reported on a W-2. Thirty-three percent (33.33%) of any 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.

Additionally, if you worked during the period of March 11, 2019 through October 28, 2021 (PAGA Period), you will receive an additional payment for your portion of the release of the State's claim for PAGA penalties. Any such payment will be treated entirely as 1099 penalties.

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 October 28, 2021. 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, if any, 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 March 7, 2022, and sent to and received at the following address:

Rivera et al. v. Home Care Assistance, Inc.
c/o Settlement Administrator
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780

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 any individual settlement payment owed 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 Court approved *cy pres*, Legal Access Alameda. 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 \$15,000 for settlement administration, will also come from the Total Settlement Amount. \$150,000 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 April 6, 2022 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 www.hoyerlaw.com), 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 to object to any term of the settlement, 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 and supporting papers 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 March 7, 2022. You must give all reasons why you think the Court should not approve the Settlement. The Court will consider your views. You (or your counsel or other legal representative) must sign the objection and include your full name, address, last four digits of your Social Security, and telephone number(s). You may appear at the Final Approval hearing in person

(assuming doing so is consistent with any COVID-related limitations the Court has implemented at that time), via telephone or via videoconference. If you wish to appear at the Final Approval hearing via telephone or videoconference, you must contact Class Counsel (listed above) and the Clerk of the Court at Dept17@alameda.courts.ca.gov and inform them of your intent to appear via telephone or videoconference, and instructions as to how to appear will be provided.

Rivera et al. v. Home Care Assistance, Inc.
c/o Settlement Administrator
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780

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 March 7, 2022. 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 April 28, 2022 at 3:30 p.m., at the Superior Court, County of Alameda, 1221 Oak Street, Department 17, 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, you may ask the Court for permission to speak during 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 (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: January 20, 2022

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.

«IMbFullBarcodeEncoded»

«FirstName» «LastName» «BusinessName»

«Address1» «Address2»

SIMID «SIMID»
«ID» for «Entity»

«City», «State» «Zip»-«ZipDPC3»

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 www.simpluris.com/case-information. 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 ‘eCourt,’ at <http://eportal.alameda.courts.ca.gov/>. After arriving at the website, click the ‘Searches’ link, then click the ‘Case Number Search’ link, then enter RG20058229 as the case number, enter the answer to the simple math question and click ‘SEARCH.’ Images of every document filed in the case may be viewed (for a charge) through the ‘Summary’ tab once you have created an account with the service. You can create a public user account at <https://eportal.alameda.courts.ca.gov/?q=user/register>.

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 October 28, 2021 (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, <u>you will release all claims asserted in the lawsuit</u> and you will be sent 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 do not cash a settlement check within 90 days, your share of the settlement contained in the uncashed settlement check will be directed to the Court approved <i>cy pres</i> , Legal Access Alameda.
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 393 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 \$150,000 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 October 28, 2021. 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, **including you**, 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 March 7, 2022) 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 «MERGED_WW» weeks as a non-Lead CCM and/or non-Lead SM in California during the period March 11, 2016 to October 28, 2021 and are projected to receive approximately the following total amount (before tax withholdings):

Defendants’ records indicate that you previously signed a settlement agreement releasing claims at issue in this lawsuit and have already received a payment of \$«MERGED_SeverancePayment», which has been deducted from your share of the settlement.

Estimated Settlement Payment: \$«MERGED_EstSettAmnt_CALC»

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.

Additionally, if you worked during the period of March 11, 2019 through October 28, 2021 (PAGA Period), you will receive an additional payment for your portion of the release of the State's claim for PAGA penalties. Any such payment will be treated entirely as 1099 penalties.

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 October 28, 2021. 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 March 7, 2022, and sent to and received at the following address:

Rivera et al. v. Home Care Assistance, Inc.
c/o Settlement Administrator
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780

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 Court approved *cy pres*, Legal Access Alameda. 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 \$15,000 for settlement administration, will also come from the Total Settlement Amount. \$150,000 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 April 6, 2022 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 www.hoyerlaw.com), 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 to object to any term of the settlement, 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 and supporting papers 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 March 7, 2022. You must give all reasons why you think the Court should not approve the Settlement. The Court will consider your views. You (or your counsel or other legal representative) must sign the objection and include your full name, address, last four digits of your Social Security, and telephone number(s). You may appear at the Final Approval hearing in person (assuming doing so is consistent with any COVID-related limitations the Court has implemented at that time), via telephone

or via videoconference. If you wish to appear at the Final Approval hearing via telephone or videoconference, you must contact Class Counsel (listed above) and the Clerk of the Court at Dept17@alameda.courts.ca.gov and inform them of your intent to appear via telephone or videoconference, and instructions as to how to appear will be provided.

Rivera et al. v. Home Care Assistance, Inc.
c/o Settlement Administrator
P.O. Box 26170
Santa Ana, CA 92799
Telephone: (888) 369-3780

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 March 7, 2022. 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 April 28, 2022 at 3:30 p.m., at the Superior Court, County of Alameda, 1221 Oak Street, Department 17, 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, you may ask the Court for permission to speak during 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 (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: January 20, 2022

EXHIBIT 3

HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
Nicole B. Gage (SBN 318005)
ngage@hoyerlaw.com
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738

Attorneys for Plaintiffs
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 HOLDINGS LLC, and DOES
5 through 25,

Defendants.

Case No. RG20058229

CLASS AND REPRESENTATIVE
ACTION

ASSIGNED FOR ALL PURPOSES TO
DEPARTMENT 17

**DECLARATION OF MARGARET
RIVERA SUPPORTING MOTION FOR
AN ORDER AND JUDGMENT: (1)
GRANTING FINAL APPROVAL OF
SETTLEMENT; (2) AWARDING
ATTORNEYS' FEES AND COSTS TO
CLASS COUNSEL; (3) AWARDING
REPRESENTATIVE ENHANCEMENT
AWARDS; AND, (4) AWARDING
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION COSTS**

I, Margaret Rivera, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, and could and would
testify to those facts if called upon to do so.

1 2. I submit this declaration in support of Plaintiffs' Motion for an Order and Judgment: (1)
2 Granting Final Approval of Settlement; (2) Awarding Attorneys' Fees and Costs to Class
3 Counsel; (3) Awarding Representative Enhancement Awards; and (4) Awarding
4 Reimbursement of Settlement Administration Costs.

5 3. I am one of the Named Plaintiffs in this case.

6 4. I, by and through my attorneys, filed this lawsuit on March 11, 2020. I have been
7 closely involved and attentive to this litigation since the beginning.

8 5. I worked for Defendants HOME CARE ASSISTANCE, INC., HOME CARE
9 ASSISTANCE OF CALIFORNIA, LLC, HOME CARE ASSISTANCE, LLC, HOME CARE
10 ASSISTANCE MANAGEMENT, LLC, and HOME CARE ASSISTANCE HOLDINGS LLC
11 (collectively "Defendant" or "HCA") as a Client Care Manager ("CCM") September 2017
12 through January 2020. My job duties included answering calls from referral sources,
13 prospective clients and/or their family members, and existing clients and employees, which
14 required "a 24/7 presence with a high level of accountability and a work cell phone will be
15 provided." CCMs perform on-site assessments and quality assurance visits to clients' homes
16 to assure complete satisfaction of care services.

17 6. I was classified as an exempt, salaried employee and was not paid hourly.

18 7. I and the other CCMs usually worked more than eight hours per day and/or forty hours
19 per week, and regularly worked either an "on-call" rotation where we were required to be on-
20 duty and available immediately by phone after their normal shifts on a "24/7" basis, or were
21 simply expected to *a/ways* be on call (for offices without any on-call rotation). CCMs like me
22 were expected to drop whatever they are doing and immediately respond to calls at any time
23 of day or night.

24 8. Although I was classified as an exempt employee, I and other CCMs like me spent the
25 vast majority of our time performing non-exempt tasks like answering calls, visiting customers
26 on-site, attempting to fill requests for caregivers from an existing list of caregivers, forwarding
27 communications up and down their chain of command, and generally performing client

1 relationship maintenance tasks. The work performed by me and the other PCMs (other CCMs
2 and SMs) did not meet the requirements for the Executive, Administrative, or Professional
3 Exemptions provided in the applicable Wage Order, and thus was not exempt from the
4 overtime, meal and rest break, and other provisions of that Wage Order. I and other PCMs
5 spent over 50% of our time working as PCMs performing non-exempt tasks like answering
6 calls from caregivers and clients (or their family members), assisting customers, visiting care
7 sites, or setting up new accounts, filling client requests for caregivers, visiting clients that
8 were temporarily receiving care outside their home, or even driving clients to and from the
9 hospital, the pharmacy, or even the grocery store.

10 9. I and the other CCMs and SMs regularly worked more than eight hours per day or
11 forty hours per week but did not receive overtime compensation at the rate of one and one-
12 half times our regular rate of pay for all such hours worked, or double time when we were
13 entitled to same under applicable law. Moreover, our non-discretionary monthly bonuses
14 were not taken into account to calculate the regular rate or overtime. CCMs and SMs like me
15 were not permitted to take an uninterrupted thirty-minute lunch break where they were
16 relieved of all duty and were not authorized or permitted to take the uninterrupted ten-minute
17 rest breaks to which they were entitled.

18 10. Myself and other PCMs were not permitted to record our hours worked, and hours
19 worked were not provided on our wage statements. Management expected, and CCMs and
20 SMs like me were engaged to be available to work and did respond to work communications
21 “24/7” throughout our employment as PCMs.

22 11. My issues with HCA were the same as the other CCMs and SMs employees with
23 whom I worked. HCA had uniform practices and policies, and I observed that my co-workers
24 had similar experiences to me.

25 12. Eventually, I decided that I needed to do something about the non-compliant practices
26 at HCA because I felt that the employees, including myself, had been and were being taken
27

1 advantage of. After much contemplation I decided to try to find an attorney who would take
2 the case.

3 13. I got in touch with my counsel in this case. I spoke with them at length about my
4 experiences, and they offered me representation without charging a retainer fee. It took me
5 approximately 12 hours to retain counsel.

6 14. I spent a lot of time working with my attorneys providing background information about
7 my employment, about HCA's policies and practices, and about the allegations in this lawsuit
8 – including but not limited to the details provided above. I gathered my compensation history,
9 other employment documents, and any policies HCA had in place to assist my counsel in
10 assessing the potential claims for me and my co-workers. My attorneys used this information
11 to identify the claims that could be alleged on a class-wide basis, to understand the inner
12 workings of HCA, and to prosecute this case on behalf of the Class and Collective.

13 15. I participated in extensive interviews prior to the filing of the complaint with my counsel.
14 I exchanged several emails with my attorneys and responded to questions about the
15 complaint during telephone calls. These initial interviews, follow up conversations, emails,
16 and discussions took about 30 hours.

17 16. Once the case was filed, I continued to work to locate and provide employment
18 documents to my attorneys throughout the course of this litigation. The documents included:
19 email correspondence, timesheets, schedules, tax forms, compensation statements, policies,
20 and pay stubs, and any other documents in my possession related to my employment with
21 HCA. Locating, organizing, and sending this documentation took several hours over several
22 weeks, approximately 22 hours.

23 17. After the complaint was filed, my attorneys sent me the Court's Alternative Dispute
24 Resolution packet, which I read and discussed with them.

25 18. I also actively participated in helping to identify possible Class and Collective
26 Members. I reached out to any and all co-workers and colleagues who I thought would want
27 to participate. I helped them stay informed about the status of the case, answered their
28

1 questions and concerns, and gathered more information to help support the case. This took
2 about 40 hours.

3 19. As the litigation continued, I regularly communicated with my attorneys via email and
4 telephone to discuss the status of the case and any recent developments. These
5 communications concerned, but were not limited to: discovery, my deposition and that of my
6 co-plaintiffs, notice of the case to employees, and preparing for mediation. I estimate that I
7 spent approximately 7 hours reviewing and responding to emails. With respect to telephone
8 conferences, I estimate that I spent about 36 hours speaking with my attorneys.

9 20. As part of the litigation, HCA's lawyers took my deposition. I spent approximately 16
10 hours preparing for my deposition and then being deposed.

11 21. We also scheduled mediation in the case to try to negotiate a settlement. I made sure
12 to clear my schedule to be available to respond to settlement negotiations. At the mediation,
13 we spoke and strategized at length about the range of possible, reasonable settlements. The
14 mediation was a full day, and there were many discussions thereafter as we continued to
15 negotiate with HCA. I estimate that I spent about 15 hours preparing for the mediation,
16 virtually attending the session, and communicating with my counsel afterward as we reached
17 the settlement.

18 22. Eventually, the Parties recently reached an agreement to settle the case. I reviewed
19 and approved the proposed Class and Collective settlement agreement.

20 23. Including my review of the settlement agreement, I have reviewed several hundreds
21 of complex legal documents in this case, and asked my attorneys for help to understand of
22 many of the documents. My review of these documents took about 7 hours.

23 24. In total, I estimate that I have spent roughly close to 175 hours engaged in activities
24 related to the class and collective claims in this litigation.

25 25. As part of the settlement agreement, I have agreed to release any and all claims I
26 have against HCA.

1 26. I believe that the settlement is fair and reasonable, and that my hard work has led to
2 a beneficial result for the Class and Collective.

3 27. I therefore respectfully request that the Court grant final approval of the service
4 payment agreed to by the Parties of \$15,000 in the settlement agreement.

5 28. All of the time I spent on this case was time that I could have been involved in other
6 endeavors, or with my family and friends. I still believe that it was time well spent because
7 someone needed to serve as a Class representative and hopefully change HCA's practices.
8 I hoped that by filing this lawsuit we could make HCA stop taking advantage of its workers
9 like me.

10 29. Making a decision to participate in this case as Class representative also placed me
11 at substantial personal risk, including: (a) the risk of my reputation in the community as a
12 result of stepping forward publicly in a class action, and the fear of retaliation against me as
13 a result; (b) the risk to my reputation as it concerns my future employment opportunities; (c)
14 the risk that I had to be subject to intrusive further discovery by HCA; (d) the risk that I would
15 have to devote substantial resources, including my own time and expenses, in participating
16 in the case; and (e) the risk that I might have to pay defense costs if I lost the case. If I was
17 compelled to pay HCA's costs had we lost the case at trial, I believe that I would have been
18 ruined financially.

19 30. I willingly took on these risks and burdens because I felt strongly about serving as a
20 Class representative and representing the Class and Collective in this case.

21
22 I declare under penalty of perjury under the laws of the State of California and the
23 United States of America that the foregoing is true and correct and is based upon my personal
24 knowledge. Executed this 30 day of March (month), 2022 in Martinez (city),
25 California.

26
27 
Margaret Rivera (Mar 30, 2022 11:59 PDT)

Margaret Rivera

EXHIBIT 4

HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
Nicole B. Gage (SBN 318005)
ngage@hoyerlaw.com
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738

Attorneys for Plaintiffs
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 HOLDINGS LLC, and DOES
5 through 25,

Defendants.

Case No. RG20058229

CLASS AND REPRESENTATIVE
ACTION

ASSIGNED FOR ALL PURPOSES TO
DEPARTMENT 17

**DECLARATION OF KAY MANALIGOD
SUPPORTING MOTION FOR AN
ORDER AND JUDGMENT: (1)
GRANTING FINAL APPROVAL OF
SETTLEMENT; (2) AWARDING
ATTORNEYS' FEES AND COSTS TO
CLASS COUNSEL; (3) AWARDING
REPRESENTATIVE ENHANCEMENT
AWARDS; AND, (4) AWARDING
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION COSTS**

I, Kay Manaligod, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, and could and would
testify to those facts if called upon to do so.

2. I submit this declaration in support of Plaintiff's Motion for an Order and Judgment: (1) Granting Final Approval of Settlement; (2) Awarding Attorneys' Fees and Costs to Class Counsel; (3) Awarding Representative Enhancement Awards; and (4) Awarding Reimbursement of Settlement Administration Costs.

3. I am one of the Named Plaintiffs in this case.

4. I, by and through my attorneys, filed this lawsuit on March 11, 2020. I have been closely involved and attentive to this litigation since the beginning.

5. I worked for Defendants HOME CARE ASSISTANCE, INC., HOME CARE ASSISTANCE OF CALIFORNIA, LLC, HOME CARE ASSISTANCE, LLC, HOME CARE ASSISTANCE MANAGEMENT, LLC, and HOME CARE ASSISTANCE HOLDINGS LLC (collectively "Defendant" or "HCA") as a Staffing Manager ("SM") initially from approximately June 2014 through November 2016 at HCA's Alamo, CA office, when I was assigned to Defendant's Beverly Hills, CA office and I worked there until I first left the company in February 2017. I then became employed by another company in June 2018 that was later acquired by Defendant in roughly July of 2019, at which point I became an employee of Defendants once again at HCA's Burlingame, CA office, where I continued to work until my second employment with Defendant ended in February 2020. My job duties as an SM included answering calls from caregivers, clients and prospects. SMs also determine staffing assignments, manage client and caregiver schedules to ensure every shift is staffed and caregivers arrive on time for their assignments. SMs also serve as one of the main/initial points of contact for caregivers to coordinate rescheduling shift vacancies.

6. I was classified as a exempt, salaried employee and was not paid hourly.

7. I and the other SMs usually worked more than eight hours per day and/or forty hours per week, and regularly worked either an "on-call" rotation where we were required to be on-duty and available immediately by phone after their normal shifts on a "24/7" basis, or were simply expected to *a/ways* be on call (for offices without any on-call rotation). SMs like me

1 were expected to drop whatever they are doing and immediately respond to calls at any time
2 of day or night.

3 8. Although I was classified as an exempt employee, I and other SMs like me spent the
4 vast majority of our time performing non-exempt tasks like answering calls, visiting customers
5 on-site, attempting to fill requests for caregivers from an existing list of caregivers, forwarding
6 communications up and down their chain of command, and generally performing client
7 relationship maintenance tasks. The work performed by me and the other PCMs (CCMs and
8 SMs) did not meet the requirements for the Executive, Administrative, or Professional
9 Exemptions provided in the applicable Wage Order, and thus was not exempt from the
10 overtime, meal and rest break, and other provisions of that Wage Order. I and other PCMs
11 spent over 50% of our time working as PCMs performing non-exempt tasks like answering
12 calls from caregivers and clients (or their family members), assisting customers, and trying
13 to fill vacant caregiver shifts.

14 9. I and the other CCMs and SMs regularly worked more than eight hours per day or
15 forty hours per week but did not receive overtime compensation at the rate of one and one-
16 half times our regular rate of pay for all such hours worked, or double time when we were
17 entitled to same under applicable law. Moreover, our non-discretionary monthly bonuses
18 were not taken into account to calculate the regular rate or overtime. CCMs and SMs like me
19 were not permitted to take an uninterrupted thirty-minute lunch break where they were
20 relieved of all duty and were not authorized or permitted to take the uninterrupted ten-minute
21 rest breaks to which they were entitled.

22 10. Myself and other PCMs were not permitted to record our hours worked, and hours
23 worked were not provided on our wage statements. Management expected, and CCMs and
24 SMs like me were engaged to be available to work and did respond to work communications
25 "24/7" throughout our employment as PCMs.

1 11. My issues with HCA were the same as the other CCMs and SMs with whom I worked.
2 HCA had uniform practices and policies, and I observed that my co-workers had similar
3 experiences to me.

4 12. Eventually, I decided that I needed to do something about the non-compliant practices
5 at HCA because I felt that the employees, including myself, had been and were being taken
6 advantage of. So I decided to try to find an attorney who would take the case.

7 13. I got in touch with my counsel in this case. I spoke with them at length about my
8 experiences, and they offered me representation without charging a retainer fee. It took me
9 approximately 11 hours to retain counsel.

10 14. I spent a lot of time working with my attorneys providing background information about
11 my employment, about HCA's policies and practices, and about the allegations in this lawsuit
12 – including but not limited to the details provided above. I gathered my compensation history,
13 other employment documents, and any policies HCA had in place to assist my counsel in
14 assessing the potential claims for me and my co-workers. My attorneys used this information
15 to identify the claims that could be alleged on a class-wide basis, to understand the inner
16 workings of HCA, and to prosecute this case on behalf of the Class and Collective.

17 15. I participated in extensive interviews prior to the filing of the complaint with my counsel.
18 I exchanged several emails with my attorneys and responded to questions about the
19 complaint during telephone calls. These initial interviews, follow up conversations, emails,
20 and discussions took about 3 hours.

21 16. Once the case was filed, I continued to work to locate and provide employment
22 documents to my attorneys throughout the course of this litigation. The documents included:
23 email correspondence, timesheets, schedules, tax forms, compensation statements, policies,
24 and pay stubs, and any other documents in my possession related to my employment with
25 HCA. Locating, organizing, and sending this documentation took several hours over several
26 weeks, approximately 24 hours.

1 17. After the complaint was filed, my attorneys sent me the Court's Alternative Dispute
2 Resolution packet, which I read and discussed with them.

3 18. I also actively participated in helping to identify possible Class and Collective
4 Members. I reached out to any and all co-workers and colleagues who I thought would want
5 to participate. I helped them stay informed about the status of the case, answered their
6 questions and concerns, and gathered more information to help support the case. This took
7 about 20 hours.

8 19. As the litigation continued, I regularly communicated with my attorneys via email and
9 telephone to discuss the status of the case and any recent developments. These
10 communications concerned, but were not limited to: discovery, my deposition and that of my
11 co-plaintiffs, notice of the case to employees, and preparing for mediation. I estimate that I
12 spent approximately 5 hours reviewing and responding to emails. With respect to telephone
13 conferences, I estimate that I spent about 5 hours speaking with my attorneys.

14 20. As part of the litigation, HCA's lawyers took my deposition. I spent approximately 32
15 hours preparing for my deposition and then being deposed and then reviewing the transcript.
16 I had to three days off work to prepare for my deposition and then be deposed, which cost
17 me approximately \$1,470.

18 21. We also scheduled mediation in the case to try to negotiate a settlement. I made sure
19 to clear my schedule to be available to respond to settlement negotiations. At the mediation,
20 we spoke and strategized at length about the range of possible, reasonable settlements. The
21 mediation was a full day, and there were many discussions thereafter as we continued to
22 negotiate with HCA. I estimate that I spent about 12 hours preparing for the mediation,
23 virtually attending the session, and communicating with my counsel afterward as we reached
24 the settlement. I had to take a day off of work to attend the mediation, which cost me
25 approximately \$490 in lost wages.

26 22. Eventually, the Parties recently reached an agreement to settle the case. I reviewed
27 and approved the proposed Class and Collective settlement agreement.

1 23. Including my review of the settlement agreement, I have reviewed several hundreds
2 of complex legal documents in this case, and asked my attorneys for help to understand of
3 many of the documents. My review of these documents took about 12 hours.

4 24. In total, I estimate that I have spent roughly close to 80 hours engaged in activities
5 related to the class and collective claims in this litigation.

6 25. As part of the settlement agreement, I have agreed to release any and all claims I
7 have against HCA.

8 26. I believe that the settlement is fair and reasonable, and that my hard work has led to
9 a beneficial result for the Class and Collective.

10 27. I therefore respectfully request that the Court grant final approval of the service
11 payment agreed to by the Parties of \$15,000 in the settlement agreement.

12 28. All of the time I spent on this case was time that I could have been involved in other
13 endeavors, or with my family and friends. I still believe that it was time well spent because
14 someone needed to serve as a Class representative and hopefully change HCA's practices.
15 I hoped that by filing this lawsuit we could make HCA stop taking advantage of its workers
16 like me.

17 29. Making a decision to participate in this case as Class representative also placed me
18 at substantial personal risk, including: (a) the risk of my reputation in the community as a
19 result of stepping forward publicly in a class action, and the fear of retaliation against me as
20 a result; (b) the risk to my reputation as it concerns my future employment opportunities; (c)
21 the risk that I had to be subject to intrusive further discovery by HCA; (d) the risk that I would
22 have to devote substantial resources, including my own time and expenses, in participating
23 in the case; and (e) the risk that I might have to pay defense costs if I lost the case. If I was
24 compelled to pay HCA's costs had we lost the case at trial, I believe that I would have been
25 ruined financially.

1 30. I willingly took on these risks and burdens because I felt strongly about serving as a
2 Class representative and representing the Class and Collective in this case.

3
4 I declare under penalty of perjury under the laws of the State of California and the
5 United States of America that the foregoing is true and correct and is based upon my personal
6 knowledge. Executed this 30th day of March (month), 2022 in Vallejo (city),
7 California.

8
9 
Kay Alyson (Mar 30, 2022 11:34 PDT)
Kay Manaligod

EXHIBIT 5

HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
Nicole B. Gage (SBN 318005)
ngage@hoyerlaw.com
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738

Attorneys for Plaintiffs
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 HOLDINGS LLC, and DOES
5 through 25,

Defendants.

Case No. RG20058229

CLASS AND REPRESENTATIVE
ACTION

ASSIGNED FOR ALL PURPOSES TO
DEPARTMENT 17

**DECLARATION OF CHRISTINE
ATENCIO SUPPORTING MOTION
FOR AN ORDER AND JUDGMENT: (1)
GRANTING FINAL APPROVAL OF
SETTLEMENT; (2) AWARDING
ATTORNEYS' FEES AND COSTS TO
CLASS COUNSEL; (3) AWARDING
REPRESENTATIVE ENHANCEMENT
AWARDS; AND, (4) AWARDING
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION COSTS**

I, Christine Atencio, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, and could and would
testify to those facts if called upon to do so.

2. I submit this declaration in support of Plaintiff's Motion for an Order and Judgment: (1) Granting Final Approval of Settlement; (2) Awarding Attorneys' Fees and Costs to Class Counsel; (3) Awarding Representative Enhancement Awards; and (4) Awarding Reimbursement of Settlement Administration Costs.

3. I am one of the Named Plaintiffs in this case.

4. I, by and through my attorneys, filed this lawsuit on March 11, 2020. I have been closely involved and attentive to this litigation since the beginning.

5. I worked for Defendants HOME CARE ASSISTANCE, INC., HOME CARE ASSISTANCE OF CALIFORNIA, LLC, HOME CARE ASSISTANCE, LLC, HOME CARE ASSISTANCE MANAGEMENT, LLC, and HOME CARE ASSISTANCE HOLDINGS LLC (collectively "Defendant" or "HCA") as a Client Care Manager ("CCM") from March 2017 through April 2019 out of HCA's Pleasanton, CA office in Alameda County. My job duties included answering calls from referral sources, prospective clients and/or their family members, and existing clients and employees, which required "a 24/7 presence with a high level of accountability and a work cell phone will be provided." CCMs perform on-site assessments and quality assurance visits to clients' homes to assure complete satisfaction of care services.

6. I was classified as a exempt, salaried employee and was not paid hourly.

7. I and the other CCMs usually worked more than eight hours per day and/or forty hours per week, and regularly worked either an "on-call" rotation where we were required to be on-duty and available immediately by phone after their normal shifts on a "24/7" basis, or were simply expected to *a/ways* be on call (for offices without any on-call rotation). CCMs like me were expected to drop whatever they are doing and immediately respond to calls at any time of day or night.

8. Although I was classified as an exempt employee, I and other CCMs like me spent the vast majority of our time performing non-exempt tasks like answering calls, visiting customers on-site, attempting to fill requests for caregivers from an existing list of caregivers, forwarding

1 communications up and down their chain of command, and generally performing client
2 relationship maintenance tasks. The work performed by me and the other PCMs (other CCMs
3 and SMs) did not meet the requirements for the Executive, Administrative, or Professional
4 Exemptions provided in the applicable Wage Order, and thus was not exempt from the
5 overtime, meal and rest break, and other provisions of that Wage Order. I and other PCMs
6 spent over 50% of our time working as PCMs performing non-exempt tasks like answering
7 calls from caregivers and clients (or their family members), assisting customers, visiting care
8 sites, or setting up new accounts, filling client requests for caregivers, visiting clients that
9 were temporarily receiving care outside their home, or even driving clients to and from the
10 hospital, the pharmacy, or even the grocery store.

11 9. I and the other CCMs and SMs regularly worked more than eight hours per day or
12 forty hours per week but did not receive overtime compensation at the rate of one and one-
13 half times our regular rate of pay for all such hours worked, or double time when we were
14 entitled to same under applicable law. Moreover, our non-discretionary monthly bonuses
15 were not taken into account to calculate the regular rate or overtime. CCMs and SMs like me
16 were not permitted to take an uninterrupted thirty-minute lunch break where they were
17 relieved of all duty and were not authorized or permitted to take the uninterrupted ten-minute
18 rest breaks to which they were entitled.

19 10. Myself and other PCMs were not permitted to record our hours worked, and hours
20 worked were not provided on our wage statements. Management expected, and CCMs and
21 SMs like me were engaged to be available to work and did respond to work communications
22 "24/7" throughout our employment as PCMs.

23 11. My issues with HCA were the same as the other CCMs and SMs employees with
24 whom I worked. HCA had uniform practices and policies, and I observed that my co-workers
25 had similar experiences to me.

1 12. Eventually, I decided that I needed to do something about the non-compliant practices
2 at HCA because I felt that the employees, including myself, had been and were being taken
3 advantage of. So I decided to try to find an attorney who would take the case.

4 13. I got in touch with my counsel in this case. I spoke with them at length about my
5 experiences, and they offered me representation without charging a retainer fee.

6 14. I spent approximately 8 hours working with my attorneys providing background
7 information about my employment, about HCA's policies and practices, and about the
8 allegations in this lawsuit – including but not limited to the details provided above. I gathered
9 my compensation history, other employment documents, and any policies HCA had in place
10 to assist my counsel in assessing the potential claims for me and my co-workers. My
11 attorneys used this information to identify the claims that could be alleged on a class-wide
12 basis, to understand the inner workings of HCA, and to prosecute this case on behalf of the
13 Class and Collective.

14 15. I participated in extensive interviews prior to the filing of the complaint with my counsel.
15 I exchanged several emails with my attorneys and responded to questions about the
16 complaint during telephone calls. These initial interviews, follow up conversations, emails,
17 and discussions took about 25 hours.

18 16. Once the case was filed, I continued to work to locate and provide employment
19 documents to my attorneys throughout the course of this litigation. The documents included:
20 email correspondence, timesheets, schedules, tax forms, compensation statements, policies,
21 and pay stubs, and any other documents in my possession related to my employment with
22 HCA. Locating, organizing, and sending this documentation took several hours over several
23 weeks, approximately 6 hours.

24 17. After the complaint was filed, my attorneys sent me the Court's Alternative Dispute
25 Resolution packet, which I read and discussed with them.

26 18. I also actively participated in helping to identify possible Class and Collective
27 Members. I reached out to any and all co-workers and colleagues who I thought would want

1 to participate. I helped them stay informed about the status of the case, answered their
2 questions and concerns, and gathered more information to help support the case. This took
3 about 10 hours.

4 19. As the litigation continued, I regularly communicated with my attorneys via email and
5 telephone to discuss the status of the case and any recent developments. These
6 communications concerned, but were not limited to: discovery, my deposition and that of my
7 co-plaintiffs, notice of the case to employees, and preparing for mediation. I estimate that I
8 spent approximately 10 hours reviewing and responding to emails. With respect to telephone
9 conferences, I estimate that I spent about 24 hours speaking with my attorneys.

10 20. As part of the litigation, HCA's lawyers took my deposition. I spent approximately 15
11 hours preparing for my deposition and then being deposed.

12 21. We also scheduled mediation in the case to try to negotiate a settlement. I made sure
13 to clear my schedule to be available to respond to settlement negotiations. At the mediation,
14 we spoke and strategized at length about the range of possible, reasonable settlements. The
15 mediation was a full day, and there were many discussions thereafter as we continued to
16 negotiate with HCA. I estimate that I spent about 13 hours preparing for the mediation,
17 virtually attending the session, and communicating with my counsel afterward as we reached
18 the settlement.

19 22. Eventually, the Parties recently reached an agreement to settle the case. I reviewed
20 and approved the proposed Class and Collective settlement agreement.

21 23. Including my review of the settlement agreement, I have reviewed several hundreds
22 of complex legal documents in this case, and asked my attorneys for help to understand of
23 many of the documents. My review of these documents took about 7 hours.

24 24. In total, I estimate that I have spent roughly close to 108 hours engaged in activities
25 related to the class and collective claims in this litigation.

26 25. As part of the settlement agreement, I have agreed to release any and all claims I
27 have against HCA.

1 26. I believe that the settlement is fair and reasonable, and that my hard work has led to
2 a beneficial result for the Class and Collective.

3 27. I therefore respectfully request that the Court grant final approval of the service
4 payment agreed to by the Parties of \$15,000 in the settlement agreement.

5 28. All of the time I spent on this case was time that I could have been involved in other
6 endeavors, or with my family and friends. I still believe that it was time well spent because
7 someone needed to serve as a Class representative and hopefully change HCA's practices.
8 I hoped that by filing this lawsuit we could make HCA stop taking advantage of its workers
9 like me.

10 29. Making a decision to participate in this case as Class representative also placed me
11 at substantial personal risk, including: (a) the risk of my reputation in the community as a
12 result of stepping forward publicly in a class action, and the fear of retaliation against me as
13 a result; (b) the risk to my reputation as it concerns my future employment opportunities; (c)
14 the risk that I had to be subject to intrusive further discovery by HCA; (d) the risk that I would
15 have to devote substantial resources, including my own time and expenses, in participating
16 in the case; and (e) the risk that I might have to pay defense costs if I lost the case. If I was
17 compelled to pay HCA's costs had we lost the case at trial, I believe that I would have been
18 ruined financially.

19 30. I willingly took on these risks and burdens because I felt strongly about serving as a
20 Class representative and representing the Class and Collective in this case.

21
22 I declare under penalty of perjury under the laws of the State of California and the
23 United States of America that the foregoing is true and correct and is based upon my personal
24 knowledge. Executed this 30 day of March (month), 2022 in Fremont (city),
25 California.

26
27 
Christine Atencio (Mar 30, 2022 11:33 PDT)
Christine Atencio

EXHIBIT 6

HOYER & HICKS
Richard A. Hoyer (SBN 151931)
rhoyer@hoyerlaw.com
Ryan L. Hicks (SBN 260284)
rhicks@hoyerlaw.com
Eisha Perry (SBN 330621)
eperry@hoyerlaw.com
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
tel (415) 766-3539
fax (415) 276-1738

Attorneys for Plaintiffs
MARGARET RIVERA, KAY MANALIGOD,
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