

**CONFIDENTIAL SETTLEMENT AGREEMENT AND
GENERAL RELEASE OF ALL CLAIMS INCLUDING PAGA**

This Confidential Settlement Agreement and General Release of all Claims including PAGA (“Agreement”) is made by and between Kristina Eisenacher (“Plaintiff”), on the one hand, and VITAS Hospice Services, L.L.C., VITAS Healthcare Corporation, and VITAS Healthcare Corporation California (collectively “VITAS” or “Defendants”) on the other hand on February 26, 2021 (the “Effective Date”). Plaintiff and Defendants are collectively referred to herein as the “Parties.” The Parties have approved this Agreement by their respective counsel of record, subject to the Agreement’s terms and conditions and the Court’s approval.

A. Definitions

a. “Action” means and refers to *Eisenacher v. Vitas Hospice Services, LLC, et al.*, Case No. Case No. 3:20-cv-04948-RS (N.D. Cal.) (also referred to as the “Eisenacher Litigation” or the “Subject Action”).

b. “Agreement,” “Settlement Agreement” or “PAGA Settlement Agreement” shall mean this Confidential Settlement Agreement and General Release of All Claims Including PAGA, including any attached Exhibits.

c. “Aggrieved Employee(s)” means and refers to all current and former sales representatives who were employed by Defendants in California at any time during the period from March 12, 2020 through January 31, 2021. Defendants represent that as of the date it executes this PAGA Agreement, a total of approximately 112 Aggrieved Employees worked at least one Eligible Pay Period during the period from March 12, 2020 through January 31, 2021.

d. “Aggrieved Employees List” means a spreadsheet containing a list of all Aggrieved Employees including each Aggrieved Employee’s: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods he or she worked during the Statutory Period.

e. “Aggrieved PAGA Employees Settlement Proceeds” means the twenty-five percent (25%) of the Net PAGA Settlement Amount that shall be paid to the Aggrieved Employees.

f. “Complaint” means and refers to the complaint filed in the Action, which alleges causes of action brought by Plaintiff individually against Defendants, as well as a cause of action alleging a PAGA violation for Cal-OSHA related claims in Labor Code sections 6400, 6401, 6402, 6403, 6404, and 6407 and the California Code of Regulations, title 8, sections 3203, 3380, 5144, 5199.

g. “Court” (or “Judge”) means the U.S. District Court for the Northern District of California.

h. “Defendants” means and refers to VITAS Hospice Services, L.L.C., VITAS Healthcare Corporation, and VITAS Healthcare Corporation California.

- i. “Defendants’ Counsel” means and refers to Hirschfeld Kraemer LLP.
- j. “Effective Date” means the date the Court enters the Final Order.
- k. “Eligible Pay Period” means any pay period worked by an Aggrieved Employee during the PAGA Release Period.
- l. “Final Order” refers to the order of the Court granting final approval of this PAGA Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties and entry of judgment.
- m. “Funding Date” means thirty (30) calendar days after the Effective Date.
- n. “Gross Settlement Amount” is the amount that Defendants will pay in connection with this Agreement, which is Two Hundred Thirty-Six Thousand, Nine Hundred Ninety-Three Dollars and Twenty-Seven cents (\$236,993.27), and includes: (a) the Net Settlement Amount to Plaintiff for the settlement and dismissal of all individual claims in the *Eisenacher* Litigation and the agreement to separate her employment with Defendants; (b) the Aggrieved PAGA Employees Settlement Proceeds payable to the Aggrieved Employees; (c) the LWDA Settlement Proceeds payable to the LWDA; and (d) Court-Awarded Attorneys’ Fees and Litigation Costs to Plaintiff’s Counsel, inclusive of the Court-awarded payment to the Third-Party Settlement Administrator for administration costs.
- o. “LWDA Settlement Proceeds” means the seventy-five percent (75%) of the Net PAGA Settlement Amount, which shall be paid to the Labor Workforce and Development Agency.
- p. “Net PAGA Settlement Amount” means the amount allocated to settle the PAGA claim and includes the LWDA Settlement Proceeds and the Aggrieved PAGA Employees Settlement Proceeds.
- q. “Notice” means the notice that will be sent to the Aggrieved Employees with payment after the Final Order is entered by the Court.
- r. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*
- s. “Parties” or “Settling Parties” means Plaintiff, the Aggrieved Employees, and Defendants, collectively.
- t. “Plaintiff” or “PAGA Representative” means Kristina Eisenacher.
- u. “Plaintiff’s Counsel” is Andrus Anderson LLP and Van Wey Presby & Williams PLLC.
- v. “Release” shall mean the release and discharge, as of the Effective Date, of the Released Claims by Plaintiff and all of the Aggrieved Employees.

w. “Released PAGA Claims” means and refers to any and all claims for civil penalties that could have been assessed upon and collected from the Releasees on behalf of the Aggrieved Employees and State of California under the Private Attorney General Act of 2004 (“PAGA”) based on the violations alleged in the Complaint, including but not limited to penalties in an amount sufficient which are recoverable for the following causes of action and claims alleged: Cal-OSHA related claims in Labor Code sections 6400, 6401, 6402, 6403, 6404, and 6407 and the California Code of Regulations, title 8, sections 3203, 3380, 5144, 5199.

x. “Releasees” means Defendants and their past, present and future officers, directors, shareholders, owners, parent companies, subsidiaries, divisions, business units, affiliates, joint venturers, predecessors, successors in interest (and their successors), transferees, affiliated and/or related entities, partners, limited partners, and assigns, or divisions or assigns thereof, and, for each of the aforementioned entities, their past, present and future officers, directors, shareholders, owners, parent companies, subsidiaries, divisions, business units, affiliates, joint venturers, predecessors, successors in interest (and their successors), transferees, affiliated and/or related entities, partners, limited partners, and assigns, or divisions or assigns thereof, as well as any current or former representatives, partners, trustees, agents, employees, attorneys, customers, insurers, reinsurers, indemnitors, or employee benefits or welfare program or plan (including the administrators, trustees, fiduciaries, and insurers of such program or plan) of an entity referenced above

y. “Release Period” means any time during the period of March 12, 2020, through January 31, 2021.

z. “Settlement Administrator” means and refers to [insert name of company], the third-party entity that will be administrator of the settlement, subject to approval by the Court, in accordance with this Agreement.

B. General.

1. On April 29, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants of alleged violations of Cal-OSHA related claims in Labor Code sections 6400, 6401, 6402, 6403, 6404, and 6407 and the California Code of Regulations, title 8, sections 3203, 3380, 5144, 5199.

2. The LWDA did not assert jurisdiction over the claims. On June 16, 2020, Plaintiff filed the Action, which included Plaintiff’s individual claims against Defendants, as well as alleging the PAGA Claim. The Parties reached a global resolution after a mediation and the Parties’ subsequent discussions, pursuant to a mediator’s proposal by Honorable Elizabeth Laporte (Ret.).

3. The Action asserts PAGA Claims for civil penalties, including an award of reasonable attorneys’ fees and costs, pursuant to PAGA, based on predicate violations alleged in the Complaint.

4. The Parties agree that neither the Parties’ settlement, this Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the settlement and Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action as to Plaintiff, the Aggrieved Employees,

or any other person, and Defendants specifically disclaim any such liability or wrongdoing. Nor will any of the foregoing be used in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation, or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith. The Parties have entered into this Agreement, including settlement of the PAGA claims, with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Agreement and any related Court documents or orders are not and may not be cited or admitted as evidence of liability.

5. Defendants deny all of the allegations in the Action, including all PAGA Claims, and deny that they have committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind and further deny that this PAGA Action is appropriate for PAGA representative treatment for any purpose other than settling this Action. Defendants deny and continue to deny each and every material factual allegation and alleged claims asserted against them in the PAGA Action.

6. The Parties have conducted a thorough investigation into the facts of the PAGA Action. This included conducting informal discovery, and exchanging information and documents relating to the Released Claims. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this PAGA Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendants, and numerous potential appellate issues. Defendants and Defendants' Counsel also agree that the settlement is fair and in the best interest of the LWDA and Aggrieved Employees. The Parties desire to completely dispose of the Action by this PAGA Settlement Agreement and the Settlement Agreement as it relates to Plaintiff's individual claims against Defendants.

7. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. (See Cal. Lab. Code §§ 2699 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees."

8. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement.

Subject to submission of this PAGA Settlement Agreement to the Labor and Workforce Development Agency by Plaintiff and subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(l)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement and disposal of the entire Action.

1. Settlement Consideration. In consideration for Plaintiff's promises and undertakings set forth in this Agreement, and in return for Plaintiff's execution of and compliance with this Agreement, including the waivers and releases that form a material part of this Agreement, Defendants shall cause to be paid to Plaintiff and her counsel a Gross Settlement Amount of \$236,993.27. That amount will include: (i) the Net Settlement Amount of \$177,964.14 to Plaintiff for a release of all claims, (ii) \$39,029.13 to Plaintiff's attorneys for fees and costs, which includes any fees to be paid to the Settlement Administrator for the administration of the PAGA claims, and (iii) \$20,000.00 allocated to Eisenacher as the PAGA Gross Settlement Amount. The PAGA Gross Settlement Amount of \$20,000.00 to be distributed with 75% to the State of California and 25% to the PAGA Settlement Administrator for distribution to the aggrieved employees. This Agreement includes a complete release of claims for Plaintiff's lawsuit, inclusive of the PAGA claim in the manner. Defendants agree to characterize Plaintiff's Net Settlement Amount as 40% lost wages and benefits subject to required withholdings and deductions and for which an IRS Form W-2 will be issued, and as 60% compensatory and/or liquidated damages for which no withholdings will be made and an IRS Form 1099 will be issued to Plaintiff.

a. Defendants shall cause each payment be made via check to Plaintiff or her counsel within ten (10) days of the date on which all of the following have occurred: (1) this Agreement has been fully executed by all Parties and their counsel, assuming Plaintiff has not revoked this Agreement; (2) Plaintiff's counsel has provided to Defendants the tax forms required in this Section; and (3) Court approval of the PAGA settlement. Defendants shall cause to be paid to Plaintiff within ten (10) days of the date on which the conditions set forth in Paragraph 1a are met \$71,185.66 for her claims of lost wages and benefits less all regular payroll deductions and applicable withholdings, including any liens, support orders and garnishments. All forms necessary to enable Defendants to cause this amount to be paid, including but not limited to an IRS Form W-4, shall be provided by Plaintiff at the time this Agreement is executed by Plaintiff and his or her counsel. An IRS Form W-2 will be issued to Plaintiff for such payment to her.

b. Defendants shall cause to be paid to Plaintiff within ten (10) days of the date on which of the conditions set forth in Paragraph C.1.a are met \$106,778.49 for Plaintiff's claims of non-economic damages, including compensatory and/or liquidated damages, assuming Plaintiff has not revoked this Agreement. An IRS Form 1099 will be issued to Plaintiff for such payment to him or her.

c. Defendants shall cause to be paid within ten (10) days of the date on which the conditions set forth in Paragraph C.1.a regarding payment to Plaintiff have occurred an Attorneys' Fees and Costs amount of \$39,029.13 for Plaintiff's claims of entitlement to recover attorneys' fees, costs, and expenses incurred by Plaintiff's Counsel, assuming Plaintiff has not revoked this Agreement. All forms necessary to enable Defendants to cause these amounts to be

paid, including but not limited to an IRS Form W-9, shall be provided by each of Plaintiff's counsels' firms at the time this Agreement is executed by Plaintiff and her counsel. IRS Forms 1099 covering this payment will be issued each to each firm receiving a payment under this subsection and to Plaintiff reflecting her share of the fees and costs paid to Plaintiff's counsel.

d. Plaintiff agrees that the foregoing payments shall constitute the entire amount of monetary consideration provided to him or her under this Agreement and that he or she is not entitled to and will not seek any further compensation of any kind either monetary or otherwise for any other claimed damage, costs, expenses or attorneys' fees in connection with the matters encompassed in this Agreement.

2. Private Attorneys General Act ("PAGA"). Defendants have appeared in the Subject Action and have denied and continue to deny each of the claims and contentions alleged by Plaintiff. This Agreement constitutes a compromise, resolution and settlement of the disputed claims arising from, connected with, or related to the allegations in the Subject Action of any type of violation asserted in any notice sent by Plaintiffs to the California Labor & Development Workforce Agency ("LWDA"), and from all claims, causes of action, rights, duties, requests, suits, administrative proceedings, grievances, damages, penalties, interest, costs or other demands for violations of the Private Attorneys General Act ("PAGA") (Cal. Labor Code Section 2699 *et seq.*), the California Unfair Competition Law (Cal. Bus. & Prof. Code Section 17200 *et seq.*), the California Labor Code, and public health orders, as well as any and all claims that could have been asserted based on the allegations in Plaintiff's letter dated April 29, 2020, to the California LWDA and in the Complaint in this *Eisenacher* Litigation as of the date this Settlement Agreement fully executed.

Accordingly, the "Eisenacher Net Settlement Fund" consists of the Eisenacher Gross Settlement Fund less Class Counsel's attorneys' fees, costs and expenses, as described in Paragraph 3 and payment of Twenty Thousand Dollars and Zero Cents (\$20,000.00) (Gross PAGA Settlement Amount) for alleged PAGA penalties as approved by the Court. Within five (5) days of the Parties fully executing this Settlement Agreement, Plaintiff shall submit the proposed settlement to the Labor Workforce Development Agency ("LWDA") and submit settlement of the PAGA claims to the Court for approval.

Upon the Court's entry of the Final Order, and except as to such rights or claims as may be created by this PAGA Settlement Agreement, Plaintiff, as representative for the State of California, and the Aggrieved Employees, hereby forever completely release and discharge the Released Parties of any and all of the Released Claims. Upon the Effective Date, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all Released Claims defined herein. This release of claims only covers those civil penalties which are recoverable under PAGA, and does not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees may have under the law against Releasees.

In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding," which the Final Order shall

so reflect. In accordance with *Arias*, the Final Order shall be binding on the Aggrieved Employees and the State as to the Released Claims, including the PAGA Claims.

3. COVID-safe Policy Changes and Enforcement. Attached hereto as Exhibit A are a list of policies that the Defendants have agreed to adopt or, if already in place, confirm enforcement of until all applicable state and local COVID-19 orders are lifted (the “Applicable Period”). Within ten (10) days after the Court has approved the settlement, Defendants shall provide Plaintiff’s Counsel with sworn affidavits from one or more employee with direct knowledge stating as follows: 1) that all employees have been sent a reminder to follow the policies and processes described in the COVID-19 Resources found on the intranet site myVITAS; 2) the means used to implement and enforce the policies companywide, and 3) certifying that enforcement measures are in place and shall remain in place throughout the Applicable Period.

4. PAGA Settlement Approval and Implemental Procedures.

a. Plaintiff’s Counsel shall prepare a motion for approval of the settlement pursuant to California Labor Code § 2699(1)(2), advocating that the Settlement is fair, adequate, and reasonable, and Plaintiff’s Counsel shall send a draft of the motion to Defendants’ Counsel allowing sufficient time for review and revisions prior to filing. Plaintiff will then move the Court for approval of the PAGA Settlement Agreement, including the PAGA Claims and penalties, Plaintiff’s Counsel’s attorneys’ fees and costs, and Settlement Administrator costs, which Defendants will not oppose. Plaintiff’s Counsel will serve the Motion on Defendants’ Counsel and submit it to the LWDA. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff’s Counsel shall undertake all required submissions and disclosures to the LWDA and the Court to obtain approval of the settlement.

b. If the LWDA intervenes or objects to the PAGA Settlement, no payment shall be made until such issues are resolved and the issue is final.

c. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, resolving any disputes regarding the calculation or application of the formula for determining the Individual Shares, drafting and mailing the settlement checks to Aggrieved Employees, issuing 1099 forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. All disputes relating to administration of the settlement by the Settlement Administrator shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this PAGA Settlement Agreement, until all payments and obligations contemplated by this PAGA Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Aggrieved Employee, and Plaintiff’s Counsel any 1099, or other tax forms as may be required by law for all amounts paid pursuant to this PAGA Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payments to the appropriate government authorities.

d. Upon the Court's entry of the Final Order, the Settlement Administrator will perform all settlement administration duties, including (i) performing a NCOA search on all Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff's Counsel. Within five (5) calendar days after the Effective Date, the Settlement Administrator shall send counsel for Defendants electronic wiring instructions to fund the Settlement Amount.

e. Within twenty (20) calendar days after the Effective Date, Defendant will send to the Settlement Administrator the Aggrieved Employees List. This information shall be treated as and remain confidential and shall be used solely by the Settlement Administrator to manage the notice and payment process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

f. On or before the Funding Date, Defendant shall wire to the Settlement Administrator the Gross PAGA Settlement Amount, as approved by the Court.

g. Within ten (10) days of receiving each wire transfer from Defendants, the Settlement Administrator shall mail the respective settlement checks to the Aggrieved Employees, Plaintiff's Counsel and LWDA, as set forth in the payment plan herein. The settlement checks mailed to the Aggrieved Employees will be accompanied with the Notice letter explaining the payment and deadline to cash the check. The Notice to LWDA shall comply with any legal requirements and in compliance with the Final Order.

h. Aggrieved Employees shall have one hundred and eighty (180) calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check will be voided and a stop-payment will be issued. The release nevertheless will be binding upon all Aggrieved Employees who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defendants' Counsel and Plaintiff's Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to issue the check. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the California State Controller in the name of the Aggrieved Employee who did not cash the check from which the Aggrieved Employee may claim the funds. Neither Defendants, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

i. Upon the Court's entry of the Final Order, Plaintiff and the Aggrieved Employees will: (i) be bound by the terms and conditions of this PAGA Agreement, and the releases set forth herein; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order; and (iii) be entitled to receive their respective Individual Share of the Net PAGA Settlement Amount, as set forth herein.

j. The Settlement Administrator will provide the Parties with a declaration confirming that distribution of payments has been completed in accordance with this PAGA Settlement Agreement and the Court's Final Order, within twenty (20) business days of the 180-day check cashing deadline. Plaintiff's Counsel will file the declaration with the Court and any required papers or as otherwise ordered by the Court. This PAGA Settlement Agreement is expressly conditioned upon the Court entering the Final Order, thereby disposing of the Action in its entirety. The Final Order and entry of judgment will not release or bar any claims other than Plaintiff's individual claims against Defendants as described in this Agreement, the PAGA Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

k. Voiding the PAGA Agreement. The Court's refusal to enter a Final Order approving the Settlement and/or its making of a fundamental change of the Parties' settlement shall render the entire PAGA Settlement Agreement voidable and unenforceable as to all Parties herein at the option of either Party. If the Court does not approve the Settlement as described in this PAGA Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of the mediator to resolve any disputes.

5. Tax Responsibility and Liability. Releasees and their employees and representatives make no representations regarding the taxability or legal effect of any of the payments described in Section 3, and Plaintiff specifically acknowledges he or she is not relying on any statement or representation of Releasees or their employees or representatives in this regard. Plaintiff is to obtain separate and independent tax advice concerning this Agreement, the Gross Settlement Amount, the payments comprising the Gross Settlement Amount, the Attorneys' Fees and Costs Amount, and her tax obligations. Plaintiff will be solely responsible for the payment of any taxes, penalties and interest assessed on the payments and his or her receipt of any money received as a result of this Agreement, and Plaintiff will defend, indemnify and hold each of the Releasees and its/their employees and representatives, and any and all of them, free and harmless from and against any claims relating to the taxability of the payments/receipt of money called for in this Agreement.

6. Dismissals. Plaintiff and Plaintiff's counsel will file with the United States District Court for the Northern District of California a Stipulation of Dismissal of the Plaintiff's claims in the *Eisenacher* Litigation with prejudice, as to all Defendants named therein, and with each Party to bear his, her or its own attorneys' fees, costs and expenses, and shall provide counsel for Defendants with a copy of those filed documents, and a copy of the order(s) of dismissal upon entry by the Court. All Parties agree to take all necessary steps to cause the completion of the dismissal with prejudice, including the drafting and/or execution of such other documents as may be necessary in this regard. The Parties shall each bear his, her or its own attorneys' fees, costs, and expenses, including with respect to any actions necessary to cause the Court to enter the dismissal of the *Eisenacher* Litigation, except as may be expressly set forth herein to the contrary.

7. General Waiver and Release. In addition to the settlement of the PAGA claims, in exchange for, and in consideration of, the payments, benefits, and other commitments described above, Plaintiff, for herself, her agents, assigns, heirs, executors, and administrators hereby fully releases, acquits, and forever discharges Releasees of and from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, expert witness fees and expenses, and

compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that she may now have or have ever had, which exist or may exist on Plaintiff's behalf against Releasees as of the Effective Date, including, but not limited to, claims for wages, back pay, front pay, reinstatement, compensatory, liquidated, or punitive damages, interest, penalties, or benefits, and hereby specifically waives and releases:

a. all claims related to or arising out of Plaintiff's employment with or relationship to Releasees, the cessation of that employment, the compensation or benefits payable in connection with that employment or the cessation of that employment, any property left in the possession of Releasees, and/or any other interaction with Releasees;

b. any claim, demand, action, or cause of action, including claims for attorneys' fees, costs and expenses of any kind based on but not limited to any claim under any federal, state or governmental constitution, statute, regulation or ordinance, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), et seq.; the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.; the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f)(2), the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq.; the Equal Pay Act, as amended, 29 U.S.C. § 206, et seq.; the Lilly Ledbetter Fair Pay Act of 2009; the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. § 2601, et seq.; the National Labor Relations Act, 29 U.S.C. § 151, et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; the Fair Credit Reporting Act, as amended, 15 U.S.C. § 1681 et seq.; the Civil Rights Act of 1866, 42 U.S.C. § 1981 et seq.; the California Constitution, the California Equal Pay Act, the California Fair Employment and Housing Act, the California Private Attorneys General Act, and the California Labor Code; all applicable state or local anti-discrimination or employment-related statutes (including but not limited to California);

c. any claim for breach of an agreement or covenant, oral or written, express or implied, between Plaintiff and Releasees, or any claim for breach of any agreement, representation, promise, understanding, policy, practice, plan, or potential entitlement;

d. any claim for past or future wages, severance, compensation, vacation pay, benefits, bonuses, commissions, fringe benefits, or other forms of consideration, payment, or remuneration, except for claims to enforce obligations of Releasees due to Plaintiff under this Agreement; and

e. any claim under any other federal, state, or local law, whether arising or emanating from statute, executive order, regulation, code, common law, or other source, including, but not limited to, all actions sounding in tort, contract, and/or any doctrine of good faith and fair dealing.

This general waiver and release is intended to be drafted and construed as broadly as permitted by law. However, notwithstanding the foregoing, nothing in this Agreement shall be construed to waive any right that is not subject to waiver by private agreement, including, without limitation, any claims arising under state unemployment insurance or workers' compensation laws. This release also shall not apply to rights or claims that may arise after the Effective Date of this

Agreement. Nothing in this Agreement shall be intended to limit or restrict any rights Releasee or Plaintiff may have to enforce the terms of this Agreement, or any other right that cannot, by express and unequivocal terms of law, be limited, waived, or extinguished. Moreover, nothing in this Agreement shall be intended to limit or restrict any rights Releasees may have to seek relief in connection with the release or disclosure of any confidential and/or proprietary information that may arise after the Effective Date of this Agreement.

8. Acknowledgment of Wages Paid and No Other Amounts Due. Plaintiff acknowledges that, except as expressly provided for in this Agreement, she has been paid any and all salary, bonuses, commissions, expense reimbursements, benefits of any kind, or other amounts due from Releasees, and that no other amounts are due to Plaintiff.

9. Waiver of Unknown Claims, Including Under Section 1542 of California Civil Code. It is further understood and agreed by the Parties that as a condition of this Agreement, Plaintiff hereby expressly waives and relinquishes any and all claims, rights or benefits that she may have against the Releasees under California Civil Code Section 1542. California Civil Code Section 1542 provides as follows:

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

In connection with such waiver and relinquishment, Plaintiff hereby acknowledges that she or her counsel may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but that Plaintiff expressly agrees to fully, finally and forever settle and irrevocably and unconditionally release and forever discharge the Releasees from any and all charges, complaints, claims, and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected, which she at any time heretofore had or claimed to have had or which she may have or claim to have regarding events that have occurred as of the date of execution of this Agreement by all Parties. Plaintiff further acknowledges, understands and agrees that this representation and commitment is essential to Releasees and that this settlement, and this Agreement, would not have been entered into were it not for this representation and commitment.

10. Waiver of Right to Participate in Class, Collective, or Enforcement Action. Plaintiff hereby agrees to forgo any and all rights to participate in a class or collective action against Releasees alleging violations of any of the laws enunciated in the waiver and release provisions of Sections 9 and 11 above. Plaintiff further covenants and agrees not to accept, recover or receive any wages, back pay, front pay, reinstatement, compensatory, liquidated, or punitive damages, interest, penalties, or benefits, or any form of relief based upon any claims that have been or could have been alleged by Plaintiff in the Subject Action that may arise out of, or in connection with, any other individual, class, collective or enforcement action, or administrative remedies, pursued by any other individual or by any federal, state or local governmental agency against Releasees.

11. No Interference with Rights. Nothing in this Agreement is intended to waive claims that may arise after Plaintiff signs this Agreement or which cannot be released by private agreement. In addition, nothing in this Agreement, including but not limited to the indemnification, release of claims, confidentiality, non-disparagement, and covenant not to sue provisions, prevents Plaintiff from communicating with, filing a charge or complaint with, or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, or any other any federal, state or local agency charged with the enforcement of any laws, including providing documents or any other information, or limits Plaintiff from exercising rights under Section 7 of the NLRA to engage in protected, concerted activity with other employees, although by signing this Agreement Plaintiff is waiving rights to individual relief (including wages, back pay, front pay, reinstatement, compensatory, liquidated, or punitive damages, interest, penalties, or benefits, or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or on Plaintiff's behalf by any third party, except for any right Plaintiff may have to receive a payment or an award from a government agency (and not Releasees) for information provided to the government agency or otherwise where prohibited.

12. Return of Company Information/Documentation. Plaintiff agrees that she shall no later than twenty (20) business days after this Agreement is fully executed, destroy all confidential information of the Defendants in her possession, including all confidential, proprietary and/or trade secret information and all copies. Plaintiff also agrees that she continues to be bound by the terms of any Agreement Regarding Confidential Information and Proprietary Developments entered into during his or her employment with Defendants.

13. Confidentiality. Plaintiff agrees not to disclose, and to protect from disclosure and to keep confidential, all information, documents, communications, client confidences, and any other material, confidential or otherwise, obtained or acquired by Plaintiff during her employment with Defendants. Plaintiff agrees that she will not discuss the *Eisenacher* Litigation and the Subject Action; provided, however, if she is asked about the *Eisenacher* Litigation, the Subject Action, or this Agreement, she will respond by saying only "The dispute has been resolved to the satisfaction of all parties" or "no comment," or may respond by referring the questioner to the public record. Plaintiff may disclose the terms of this Agreement to her tax accountants or other fiduciaries within a confidential relationship, the Internal Revenue Service as required by law or any other governmental taxing authority as required by law, or as otherwise required by law, or as required in response to an investigation by any federal or state agency. However, Plaintiff agrees to inform anyone to whom disclosure is permitted under this Agreement of the existence of this confidentiality provision and request that they keep this information confidential. Nothing in this provision is intended to prohibit: (i) Plaintiff from discussing this settlement with her spouse or partner, attorneys, or tax advisors; (ii) Plaintiff from discussing the settlement with other Aggrieved Employees after the Stipulation has been approved by the Court; or (iii) Plaintiff's counsel from communication with Aggrieved Employees in this case or with the LWDA and/or the Court in which this action is pending.

14. References and Post-Employment Inquiries Employment: Any inquiries to Defendants regarding the employment of Plaintiff shall be directed to uConfirm at 866-312-8266. All managers of Plaintiff shall be specifically advised that they may not provide any information or comment regarding Plaintiff's employment and must refer any such inquiries to uConfirm.

Defendants' Human Resources department shall not disclose any details regarding Plaintiff's employment, termination, performance or her participation in the Subject Action or *Eisenacher* Litigation. Instead, uConfirm may only provide information concerning an employee's dates of employment, total time employed, and last position held.

15. Layoff of Plaintiff. As part of this Agreement, Plaintiff's employment with VITAS will end and she shall not be reinstated. Plaintiff's separation from VITAS will be treated as a layoff. Defendants agree that they will not oppose Plaintiff's continued receipt of or re-application for unemployment benefits and, if the application for unemployment benefits is initially denied by the Employment Development Department ("EDD") or comparable state or federal agency, Plaintiff may object to the decision and VITAS will confirm the layoff when the agency requests the reason for the separation and not oppose the appeal.

16. Breach of Confidentiality Provision. Plaintiff further recognizes and acknowledges that the confidentiality provision in Section C.13 is a material term of this Agreement, and that its violation will constitute a material breach. Plaintiff acknowledges and agrees that the time and expenses involved in proving the actual damage or loss suffered if there is a breach of Section C.13 makes this case appropriate for liquidated damages. Accordingly, instead of requiring any proof of damages or losses, Plaintiff agrees that as liquidated damages for any breach of Section C.13 (but not as a penalty), she shall pay an amount equal to 30% of her Gross Settlement Amount for said breach. Defendants shall have the burden of proof by a preponderance of the evidence establishing the breach of Section C.13. Neither the breach of Section C.13 nor the payment of liquidated damages by Plaintiff shall affect the continuing validity or enforceability of this Agreement or the release of claims by Plaintiff.

17. Response to Subpoena, Court Order, or Inquiry. Plaintiff agrees and understands that, except as may be required by subpoena, court order, or other legal proceedings, she shall not voluntarily say any words or undertake any action that could reasonably be construed as assisting a third party in the preparation of or assistance in a legal claim against Defendants and shall not, in any way, assist any individual or entity in commencing or prosecuting any action or proceeding, including, but not limited to, any administrative agency claims, charges or complaints or any lawsuit against Releasees, or in any way cooperate or participate in any such action or proceeding, including trial, pretrial preparation, pre-litigation fact-gathering or administrative agency proceeding connected with any and all matters. Absent legal compulsion, this Agreement bars Plaintiff from testifying, providing documents or information, advising, counseling or providing any other form of assistance to any person or entity who wishes to make or who is making claims against Defendants. However, nothing in this Agreement shall preclude Plaintiff or her counsel from in any way complying with any deposition subpoena or other legal process requiring her to provide information, or in any other way comply with any legal requirement that she provide information concerning the matters stated herein. However, if Plaintiff or her counsel are required to disclose information that this Agreement otherwise prohibits them from disclosing pursuant to court order and/or subpoena, they shall notify Defendants' counsel, John Baum at JBaum@hkemploymentlaw.com in writing within 48 hours of receipt or as soon thereafter as reasonably possible of such court order, subpoena, or inquiry by a state or federal agency, and simultaneously provide Defendants' counsel with a copy of such court order, subpoena or inquiry by a state or federal agency.

18. Non-Disparagement. Plaintiff and Plaintiff's Counsel agree not to make, publish, post, or otherwise disseminate any disparaging or defamatory comments or statements, whether written or oral, about Defendants' business, employees, officers, directors, technologies, market position, employment policies and practices, or operations, and agrees to refrain from participating in any activity or making any comments or statements that are calculated to damage or have the effect of damaging the business or reputation of the Defendants. Similar to Paragraph 14, all managers of Plaintiff shall be specifically advised that they may not provide any information or comment regarding any Claimant's employment and must refer any inquiries about any Claimant's employment to uConfirm. uConfirm may only provide information concerning an employee's dates of employment, total time employed, and last position held.

19. No Media Statements Regarding Any Defendant's Business. Plaintiff and Plaintiff's Counsel agree that he or she shall not make, publish, post or otherwise disseminate any statements or comments ("Media Statements") on television, radio, social media, internet blogs, sites, or videos, or newspapers or magazines, whether in electronic or other format, or any other form of media about her employment with any Defendant, the claims made about Defendants in the *Eisenacher* Litigation, the resolution of any claims alleged against Defendants or any of Defendant's business, technologies, market position, employment policies and practices, management representatives and officers (past, present and future), operations, products or services. Plaintiff's counsel may announce the resolution of the case on their respective websites without disclosing Defendants' name or the total amount of the settlement.

20. Attorneys' Fees, Costs, and Expenses. Plaintiff and Defendants agree to bear her or its own attorneys' fees, costs and expenses incurred, and to be incurred, as a result of any claims or disputes, concerning Plaintiff's claims in the Litigation, and in connection with any released claim or dispute, and including the negotiation, execution and implementation of this Agreement, except as may be expressly set forth herein. In the event that any Party to this Agreement asserts a claim for breach of this Agreement or seeks to enforce its terms, the prevailing party in any such proceeding shall be entitled to recover her/its costs and expenses, and reasonable attorneys' fees.

21. Enforcement of Settlement Agreement. In the event of a dispute concerning the rights or obligations under this Agreement or breach of a term of this Agreement, notice must be emailed to opposing counsel. After receipt of notice, counsel for the Parties shall meet and confer in a good faith attempt to resolve the dispute for a period not to exceed (10) calendar days. In the event those efforts are unsuccessful, the matter shall be submitted to mediation and, if mediation is not successful, to arbitration under the Federal Arbitration Act and pursuant to JAMS Arbitration Rules for Employment Disputes. The fees for any such mediation and/or arbitration will be split equally between the Parties.

22. Interpretation. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against either of the Parties.

23. Choice of Law. As to Plaintiff, this Agreement shall in all respects be governed by the laws of the State of California.

24. Waiting and Revocation Period. Pursuant to the Older Workers' Benefit Protection Act and the Age Discrimination in Employment Act, Defendants hereby advise Plaintiff to consult

with an attorney prior to signing this Agreement. Plaintiff shall have up to twenty-one (21) days to consider whether she should sign this Agreement and has seven (7) days following the date on which she signs the Agreement to revoke it. Plaintiff may sign this Agreement at any time during this 21-day period. The Agreement does not become effective until after this seven (7) day period has elapsed. Should Plaintiff decide to revoke this Agreement after she has signed it, Plaintiff can do so only by delivering a written notification of her revocation, no later than the seventh day after she signs this Agreement, to Counsel for Defendants. In signing this Agreement, Plaintiff is not releasing or waiving any federal age discrimination claims based on conduct or events that occur after the Agreement is signed.

25. Drafting. The Parties agree that this Agreement shall be construed without regard to the drafter of the same and shall be construed as though each Party to this Agreement participated equally in the preparation and drafting of this Agreement.

26. Headings. The headings in each Section herein are for convenience of reference only and shall be of no legal effect in the interpretation of the terms hereof.

27. Entire Agreement. This Agreement contains the entire agreement between the Parties relating to all claims released herein, the resolution of the Plaintiff's claims in *Eisenacher* Litigation and Subject Action, the rights herein granted and the obligations herein assumed and supersedes any previous negotiations, agreements or understandings of any kind relating to the resolution of Plaintiff's claims in *Eisenacher* Litigation and the Subject Action. Any oral representations or modifications concerning this Agreement will be of no force or effect. The Parties represent and warrant that they are not relying on any promises or representations that do not appear written herein. This Agreement can be modified only in the form of a writing signed by the Parties hereto and specifically identified as an amendment to this Agreement. Notwithstanding anything to the contrary in this Agreement, Plaintiff agrees that she continues to be bound by, and has complied with, the terms of other Agreements entered into with Releasees during her employment.

28. Counterparts. This Agreement may be executed in separate counterparts and each such counterpart shall be deemed an original with the same effect as if all Parties had signed the same document. Facsimile signatures on this Agreement shall be treated as original signatures.

29. Severability. If any provision of this Agreement or any application of any provision of this Agreement is held invalid by an arbitrator or court of law of competent jurisdiction, the Parties agree that such a determination shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are severable. Further, to the extent any part of the waiver and release provisions of Section 9 and/or Section 11 is found invalid, Plaintiff agrees to execute a new release that is as equal in breadth as possible.

30. Authority to Enter Into Agreement. Plaintiff represents and warrants that, as of the date of the execution of this Agreement, she is the sole and lawful owner of all rights, title and interest in and to all released matters, claims and demands referred to herein, has the right and authority to execute this Agreement, and she has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims or demands relating to any right surrendered by virtue of this Agreement. Plaintiff further represents and warrants that she has had the opportunity to consult

and has consulted legal counsel in connection with the negotiation and execution of this Agreement. Each of the Parties and her or its signatory represents that the signatory is either a party or a business representative or assignee of, and is fully authorized to execute this Agreement on behalf of, the Party for whom he or she signs.

31. Successors and Assigns. It is expressly understood and agreed by the Parties that this Agreement and all of its terms shall be binding upon each Party's representatives, heirs, executors, administrators, successors (and their successors) and assigns.

32. Knowing and Voluntary Agreement. Plaintiff understands and agrees that she may be waiving significant legal rights by signing this Agreement, and represents that she has entered into this Agreement knowingly and voluntarily, after consulting with her attorneys, with a full understanding of and in agreement with all of its terms.

33. Discovery of New or Different Facts. Plaintiff acknowledges she may later discover facts different from, or in addition to, those Plaintiff now knows or believes to be true with respect to the claims and potential claims released in this Agreement, and agrees the release shall be and shall remain in effect in all respects as a complete and general release of all matters released, notwithstanding any such new, different or additional facts.

34. Other Agreement. Defendants have entered into a separate settlement agreement with nine Claimants: Rosalie Anderson, Tamaris Cooper-Powell, Timothy Fosnight, Frances Gonzales, April McHale, Louis Petraitis, Mazen Sinno, Susan Wentink, and Christina Windham. The Parties to this Agreement understand and agree that Kristina Eisenacher must sign this Agreement (and not revoke) and the nine Claimants must sign their own Settlement Agreement (and not revoke) for this Agreement to be valid and binding on the Parties.

PLEASE READ CAREFULLY. THIS AGREEMENT CONTAINS A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

AGREED AND UNDERSTOOD:

Kristina Eisenacher, Plaintiff

Date: March 2, 2021



Defendants VITAS Hospice Services, L.L.C., VITAS Healthcare Corporation, and VITAS Healthcare Corporation California

Date: March 16, 2021

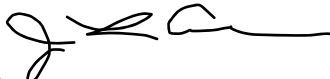
By: 

Print Name and Title: EUP+GC

APPROVED AS TO FORM AND CONTENT:

Attorneys for PLAINTIFF
ANDRUS ANDERSON LLP

Date: March 13, 2021

By: 

Jennie Lee Anderson, Esq.

Attorneys for PLAINTIFF
VAN WEY PRESBY & WILLIAMS PLLC

Date: March 2, 2021

By: 

Ellen Presby, Esq.

Attorneys for VITAS Hospice Services, L.L.C.,
VITAS Healthcare Corporation,
and VITAS Healthcare Corporation California,
HIRSHFELD KRAEMER, LLP

Date: March 16, 2021

By: 

John Baum, Esq.

Exhibit A

- VITAS will continue to provide Personal Protective Equipment commensurate with job responsibilities to all employees any time they are required to visit a facility or work in the VITAS offices in any capacity.
- VITAS will continue to provide intra-office safety protocols to decrease the risk of the spread of COVID-19.
- VITAS will continue to provide safety protocols for use on in-person sales visits to decrease the risk of the spread of COVID-19.
- VITAS will continue to provide COVID-19 testing to employees who, while carrying out their job duties, have come in contact with any individual who tests positive for COVID-19.
- VITAS will continue to require that employees report positive COVID-19 tests to their manager.
- VITAS will continue to perform contact tracing and disclose to an employee when that employee has come in contact with an individual who has tested positive for COVID-19 in the course of his or her job duties.
- VITAS will continue to require that all employees follow facility policies and will continue to create a culture that respects the facility's priority to protect their patients and staff. Facility policies include policies that are designed to protect the safety of well-being of the facility, its patients, and its employees.
- VITAS has provided an additional 2 weeks of PTO for all employees, including those who have contracted COVID-19.
- VITAS will continue to provide a work-from-home process with reasonable accommodations for any sales representatives who presents a disability or medical issue to VITAS that impacts the sales representative's performance of his/her job duties, unless there is an undue hardship. Employees who are at increased risk of complications from COVID-19 due to their disability or medical condition will be reasonably accommodated, unless there is an undue hardship. This policy must include taking into consideration a doctor's note requiring an employee to work remotely.
- VITAS will continue to allow virtual communications, including phone calls, to count towards sales call quotas while COVID-19 public health orders are in place.