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Attorney for Plaintiff SARAH STONEHOCKER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SARAH STONEHOCKER, on behalf of herself
and all others similarly situated

Plaintiff,

v.

KINDRED HEALTHCARE OPERATING, LLC
and DOES 1-25,

Defendants.

Case No.: 4:19-cv-02494-YGR

**DECLARATION OF MATTHEW D.
CARLSON IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
APPROVAL OF PAGA SETTLEMENT**

Date: November 10, 2020

Time: 2:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers

Dept.: Courtroom 1, Fourth Floor

Complaint Filed: February 14, 2019
(San Francisco Superior Court)

1 I, Matthew D. Carlson, declare:

- 2 1. I am an attorney licensed to practice in this Court and am Counsel for Plaintiff in this
- 3 case. I have personal knowledge of the facts set forth herein. If called as a witness, I could
- 4 and would competently testify thereto.
- 5 2. Attached hereto as **Exhibit 1** is a true and correct copy of the parties' Joint Stipulation and
- 6 Class and Representative Action Settlement Agreement and Release ("Settlement
- 7 Agreement") and exhibits thereto.

8 **FACTUAL BACKGROUND**

9 **A. Litigation History**

- 10 3. On February 14, 2019, Plaintiff filed her original Complaint, Case No. CGC-19-573756,
- 11 against Defendant Kindred Healthcare Operating, LLC ("Defendant")¹ in the Superior
- 12 Court of California for the County of San Francisco. On April 2, 2019, while the case was
- 13 still pending in state court, Plaintiff filed her currently operative First Amended Complaint
- 14 ("1AC"), around which time Plaintiff also served Defendant. In her 1AC, Plaintiff
- 15 asserted three claims on behalf of herself and all other SCs who worked in Kindred SNFs:
- 16 (1) failure to compensate SCs for off the clock hours worked; (2) failure to pay SCs their
- 17 wages when due (a derivative of Plaintiff's off the clock claim), and (3) unfair business
- 18 practices (an Unfair Competition Law claim that "borrows" Plaintiff's overtime claim).
- 19 Plaintiff's theory of the case has been that, as a result of Kindred's unrealistic productivity
- 20 standards, she and other individuals who worked as SCs at Kindred's SNFs worked off
- 21 the clock hours for which they were not paid.
- 22 4. Following assignment of the case to this Court, the parties agreed that the Court would
- 23 need to resolve the issue of whether the class settlement in *Cashon* barred Plaintiff's
- 24

25 ¹ As used herein, the term "Kindred" means the named defendants in the Second Amended

26 Complaint, Defendants Kindred Healthcare Operating, LLC, Kindred Rehab Services, LLC,

27 Kindred Rehab Services, Inc., RehabCare Group East, LLC, RehabCare Group East, Inc.,

American VitalCare, LLC, and RehabCare Group of California, LLC.

individual claims and therefore lacked standing to assert class claims in this case. On September 19, 2019, after full briefing on the issue, the Court denied Defendant's Motion for Summary Judgment. In October 2019, the parties began discussing the possibility and parameters of a potential mediation as well as claims for meal and rest break violations, wage statement violations and related derivative claims which had not been asserted.² Following extensive discussions regarding the scope and type of information and documents needed for a thorough mediation, the parties agreed that experienced mediator Tripper Ortman would be best suited to help the parties resolve this action. Due to Mr. Ortman's schedule, the complicated nature of Kindred's retrieval of data and documents needed for mediation, and the lack of availability of other similarly experienced mediators, the parties' mediation was scheduled for May 20, 2020, and the case has been essentially stayed to date.

B. Mediation-Related Discovery

5. In advance of mediation, Plaintiff produced numerous documents for mediation purposes, including, for example, emails and spreadsheets Plaintiff received in the course of her work as a first level "Program Director." These documents showed, *inter alia*, that, Class Members and PAGA Releasees have been subject to productivity metrics regarding direct patient care, such as the use of Patient Care Ratios ("PCRs"), and that Kindred

² In late November 2019, with the parties unable to make significant progress on these negotiations, Plaintiff's counsel drafted and sent to Kindred's counsel two motions ready to file in the event a concrete mediation plan could not be timely established – a Motion for Attorney's Fees and Costs arising from Kindred's unsuccessful Motion for Summary Judgment (pursuant to the attorneys' fee provision in the *Cashon* settlement agreement), as well as a Motion for Leave to Amend Plaintiff's Complaint. *See Cashon* Dkt. No. 106-1 at ¶ 8.14 ("In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its attorneys' fees and costs."); *see also Board of Trustees of Laborers Vacation-Holiday Trust Fund for Northern California v. Lopez*, 2018 WL 2117336, *3 (N.D. Cal.) (party prevailing on motion to enforce settlement awarded to fees pursuant to provision in settlement agreement stating "[i]n any action to enforce this Agreement, the prevailing party shall be entitled to its attorneys' fees and costs incurred in enforcing this Agreement."). Counsel also included with his email to Kindred's counsel all supporting documents, including numerous exhibits.

supervisors monitored overtime hours worked by Class Members and PAGA Releasees whom they supervised.

6. Kindred produced numerous categories of documents including for mediation purposes including, for example:

- Job descriptions (showing, *inter alia*, that Class Members and PAGA Releasees were or are non-exempt employees and provide(d) skilled direct patient care);³
- Numerous wage and hour-related policies, practices, and procedures including those pertaining to off the clock work, meal periods, and rest periods (including multiple Kindred policies regarding, *inter alia*, timekeeping responsibilities, prohibition of off the clock work, and requirements relating to meal and rest periods);
- Sample arbitration provisions;
- Policies, practices, and procedures concerning patient documentation;
- Daily workflow graphs and attendant instructions on how to use a timekeeping

³ I note that while there are a number of job descriptions that fall within the class definition, many of the different titles are simply a result of slight changes to titles, and the class effectively encompasses only non-exempt individuals who have provided direct patient care at SNFs in California – Occupational Therapists, Physical Therapists, Speech Language Pathologists, and Respiratory Therapists in California. *See also* Stonehocker Decl. at ¶¶ 3-6.

I also note that the job descriptions for various “Program Directors,” “Rehab Clinical Leader,” “Rehab Coordinator” – job titles included in the class definition – show that, despite their “managerial-sounding” names, they, like all other OTs, PTs, STs, SLPs, and RTs, have been classified as non-exempt employees and have provided direct patient care in the scope of their duties. Indeed, as Plaintiff notes in her Declaration, these individuals are, in fact, Occupational Therapists, Physical Therapists, and Speech Language Pathologists who perform those job functions but who also take on first-level oversight duties and who also have been subject to Kindred’s productivity standards and whose names appear on productivity-related spreadsheets. Stonehocker Decl. at ¶¶ 3-6.

Additionally, the job descriptions show that the “Physical Therapist Assistant” and “Occupational Therapist Assistant” job positions are also non-exempt and, like all other job categories, their duties include providing skilled direct patient care (for Assistants, under the direction of Physical and Occupational Therapists). *See also* Stonehocker Decl. at ¶¶ 3-6. Further, like all other job categories included in the Settlement’s definition of “Skilled Clinician”, Assistants have been similarly subject to Kindred’s productivity standards. *See id.*

1 application for, *inter alia*, scheduling, patient recordkeeping, and time worked.⁴

2 Kindred also produced information needed to value claims, including the following data:

- 3
- 4 • Number of Class Members during multiple time periods;
- 5 • Number of Class Members during the relevant time period whose employment with Kindred has ended;
- 6 • Average base hourly rate of pay across Class Members during the relevant time period;
- 7 • Aggregate number of calendar days worked by Class Members during the relevant time period;
- 8 • Aggregate number of workweeks worked by Class Members during the relevant time period;
- 9 • Aggregate number of pay periods worked by Class Members and PAGA Releasees during multiple time periods; and
- 10 • The number of Class Members who have signed an arbitration agreement with Kindred and did not opt out.
- 11
- 12
- 13

14 **C. Mediation**

- 15 7. On May 20, 2020, the parties engaged in an approximately 10-hour long mediation with
- 16 Mr. Ortman via Zoom, with counsel and the parties present for the full duration of the
- 17 mediation. After thorough negotiations concerning PAGA and Class Claims, the
- 18 mediation ended with an executed memorandum of understanding, which formed the basis
- 19 for the instant Agreement.

20 **VALUATION OF CLAIMS**

- 21 8. Using data, information, and documents provided by Kindred, documents and information
- 22 provided by Plaintiff, as well as my significant experience litigating and settling wage and
- 23

24 ⁴ All documents produced by both Plaintiff and Defendant were produced for mediation

25 purposes only and are therefore subject to mediation privilege. Likewise, they were produced

26 subject to the stipulated protective order in this action. If the Court feels it necessary to review

27 the documents referenced herein, Plaintiff is willing to submit them consistent with the stipulated protective order.

hour class actions (*see* ¶¶ 66-73, *infra*), I have made the following approximate valuations and assessments of claims at issue in Plaintiff's Second Amended Complaint.

9. While these are the claims that have been asserted for settlement purposes, the claims alleged in Plaintiff's Original and First Amended Complaints – specifically, the off the clock claim (as well as newly-asserted related claim for penalties under PAGA) – are the driving force behind this action and settlement, though as discussed below, even those have serious challenges to their viability.⁵
10. Other claims released in the settlement have, for reasons pertaining to liability, proof of damages, and/or class trial manageability issues, and as discussed in detail below, have nominal value.
11. For data pertaining to each claim, where needed, I extrapolated Kindred's data backwards to the start of the relevant statute of limitations, and then forward to the release cutoff of September 1, 2020. In this manner, I was able to assign a reasonable value to the claims based on complete data for the entire relevant time period, rather than as the data existed at the time it was produced for mediation (as is frequently the case).
12. As is shown herein, I carefully reviewed issues of class certification, liability, and damages with respect to each claim, and thoroughly researched the law applicable to each claim. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 970–71 (N.D. Cal. 2019) requiring more than “generic statements of various risks inherent to [a] class action.”).

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⁵ As discussed more below, discovery has shown Plaintiff's waiting time claim, which she also asserted in her Original and First Amended Complaints, may be difficult to prove.

Failure to Pay Minimum Wage, Straight Time and/or Overtime Wages (Cal. Lab. Code §§ 510, 1194, 1197, 1198, Wage Order 4 and/or 5, corresponding California Code of Regulations, 28 U.S.C § 207)⁶

13. Cal. Lab. Code §§ 510, 1194, 1198, the applicable Wage Orders and the corresponding California Code of Regulations collectively generally provide that employees who work in excess of eight hours in one workday or in excess of 40 hours in any workweek shall be compensated at a rate of no less than one and one-half times the employee's regular rate of pay. 28 U.S.C. § 207 provides that employees who work in excess of 40 hours in a workweek shall be compensated at a rate of no less than one and one-half times the employee's regular rate of pay.

14. Preliminarily, I view the value of a FLSA claim to be subsumed entirely by the California overtime claim for several reasons:

- First, California overtime law provides more substantive protection than does the FLSA – *i.e.*, premium pay for work in excess of eight hours per day or 40 hours per week versus premium pay only for work in excess of 40 hours per week.
- Second, the baseline statute of limitations on an FLSA claim – 2 years – is shorter than California's four-year statute of limitations on overtime claims.⁷
- Third, while the FLSA provides for double damages on claims for unpaid wages, this provision would only effectively double the extent of liability under the FLSA to four years, bringing it in line with liability under the Labor Code. Of course, Kindred would argue that it should not be subject to double damages under the FLSA because it acted in "subjective good faith and objective reasonableness" – which it might have been able to prove for

⁶ While an FLSA claim is not asserted in the Second Amended Complaint, it is analyzed here in the interest of providing the Court with a thorough examination of all theories of recovery for the off the clock claim.

⁷ Technically, the statute of limitations on an overtime claim under the Labor Code is three years; however, an overtime claim brought pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.*, is four years, which is why Plaintiff asserted a § 17200 claim in her Complaints. Claims for penalties are not, however, actionable under § 17200 and therefore cannot take advantage of § 17200's longer statute of limitations. *See, e.g., In re Wal-Mart Stores, Inc. Wage and Hour Litigation*, 505 F.Supp.2d 609, 619 (N.D. Cal. 2007).

reasons discussed herein. *See Alvarez v. IBP, Inc.*, 339 F.3d 894, 910 (9th Cir. 2003), *aff'd*, 546 U.S. 21 (2005).

- Fourth, while a finding of “willfulness” under the FLSA could extend the limitations period on the claim to three years,⁸ substantial evidence produced during the course of this litigation indicates that Kindred did not know that Class Members were working off the clock, and therefore likely could not have “willfully” deprived Class Members of overtime pay. For example, Kindred’s timekeeping app has required Class Members to formally attest to the accuracy of their submitted time records on a daily basis and specifically acknowledge, each time, that “I accurately recorded all time worked and did not work off the clock”. Kindred’s workflow chart specifically instructs Class Members to punch in before all work is performed, punch out after all work is performed, and punch out and in for breaks. Numerous Kindred policies and training documents for managers specifically prohibit off the clock work. And while at least one Kindred supervisor maintained an “Overtime Watch List”, one interpretation of this document is that overtime hours worked were in fact submitted by Class Members were in fact compensated by Kindred. Indeed, it seems unlikely that Class Members would submit only a portion of their overtime hours worked, particularly when some Class Members submitted substantial overtime records, in many instances well more than 20 hours in a week. Moreover, the fact that nearly all submissions were not round numbers may indicate that the submissions were accurate, rather than a product of rounding down (or up).
- Fifth, an asserted FLSA claim requires all potentially aggrieved employees to “opt in” to a collective, and undoubtedly not all Class Members in this case would do so, thus limiting damages to a substantial degree. *See Rutti v. Lojack Corp.*, 2012 WL 3151077, *5 (C.D. Cal. July 31, 2012) (“Historically, the FLSA’s opt-in mechanism has limited the size of the FLSA action, with estimates indicating that typically only between fifteen and thirty percent of potential plaintiff-employees opt-in.”).

15. For these reasons, I do not ascribe any extra value to the released FLSA claims. *See Kempen v. Matheson Tri-Gas, Inc.*, No. 15-CV-00660-HSG, 2016 WL 4073336, *11 (“If the nationwide FLSA overtime class is completely co-extensive with the California overtime class, a recovery for both classes might be duplicative.”).⁹
16. This case presented significant difficulties proving a critical element of the class off the clock claim: liability for an off the clock claim is “contingent on proof that [a defendant]

⁸ See 29 U.S.C. § 255(a); *see also McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 130-131, (1988) (An employer commits a willful violation if “it knew or showed reckless disregard for the matter of whether its conduct was prohibited by the FLSA.”).

⁹ Of course, the FLSA release here is not a nationwide release.

1 knew or should have known off-the clock work was occurring” and “that employees are
 2 clocked out creates a presumption they are doing no work, a presumption [] the putative
 3 class members have the burden to rebut.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal.
 4 4th 1004, 1051 (2012). To be sure, it is Plaintiff’s position that she and other Class
 5 Members did work off the clock, and Kindred had reason to know about it because of its
 6 unrealistic productivity standards. However, Kindred’s robust policies regarding off the
 7 clock work, and particularly the attestation requirement in its timekeeping app regarding
 8 off the clock work, would make it challenging for Plaintiff to rebut the *Brinker*
 9 presumption, particularly on a classwide basis.

10 17. It is also Plaintiff’s position that Kindred’s productivity standards would support class
 11 certification of the off the clock claim. *See Alberts v. Aurora Behavioral Health Care*, 241
 12 Cal. App. 4th 388 (2015); *Jimenez v. Allstate Ins. Co.*, 2012 WL 1366052, (C.D. Cal. Apr.
 13 18, 2012), *aff’d* (Sept. 3, 2014); *Frausto v. Bank of Am., Nat’l Ass’n*, 2019 WL 6493983
 14 (N.D. Cal. Dec. 3, 2019); *Moore v. Int’l Cosmetics & Perfumes, Inc.*, 2016 WL 7644849
 15 (C.D. Cal. Mar. 17, 2016). More specifically, it was Plaintiff’s theory that given the
 16 number and duration of non-billable tasks Class Members perform, it would have been
 17 impossible to achieve PCRs at or above 85% *without* working off the clock, and according
 18 to Plaintiff’s documents, Class Members routinely recorded PCRs at or above 85%.

19 18. However, critical to this theory is evidence that, with uniformity, an 85% or higher PCR
 20 meant that a Class Member was working off the clock. Plaintiff may have been able to
 21 prove that was the case, perhaps with expert testimony. *See Alberts*, 241 Cal. App. 4th at
 22 395-396 (crediting expert declaration by a psychiatric nurse who had knowledge of
 23 practices in acute care psychiatric facilities and who analyzed Aurora’s practices relevant
 24 to wage and hour violations). But discovery has complicated this theory. For example, it
 25 had been my belief that the most time-intensive non-billable task – documenting patient
 26 care – was exclusively non-billable work. However, Kindred documents show that is
 27 apparently not always the case, such as when Class Members document at the point of
 28

1 care. Moreover, Kindred documents show that documentation was made easier and
2 therefore less time-intensive in some ways by the Kindred app, which allowed for class
3 members to choose commonly used phrases from a “library” to auto-fill their notes as
4 appropriate. Thus, it may indeed have been possible for Class Members to have obtained
5 PCRs at 85% or higher without working off the clock.

6 19. In the event that Plaintiff was unable to come forward with objective evidence that PCRs
7 in excess of 85% automatically meant off the clock work had occurred, it likely would
8 have been necessary to obtain anecdotal evidence from Class Members, in which case
9 issues of trial manageability become magnified. *Alberts*, 241 Cal. App. 4th at 423
10 (Rothschild, P.J., concurring) (“In a case like this one, where plaintiffs’ primary
11 allegations are that the hospital had de facto illegal policies, as opposed to policies illegal
12 on their face, individual evidence is likely to be central both to plaintiffs’ case and to the
13 hospital's defense.”).

14 20. At its heart, the class certification theory here is that Kindred’s productivity standards give
15 rise to liability for uncompensated off the clock work. But as this Court has held,
16 “evidence of [productivity] incentives alone does not establish a common issue for class
17 certification.” *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2014 WL 5877695,
18 *13 (N.D. Cal. Nov. 12, 2014). Perhaps Plaintiff might have been able to provide more
19 than evidence of productivity incentives at class certification, but it is not certain that it
20 would have been possible or, even if possible, enough.

21 21. In sum, issues concerning (1) the viability of Plaintiff’s productivity-based theory of class
22 certification and liability, (2) classwide actual or constructive knowledge of off the clock
23 work being performed, and (3) proving classwide damages when Class Members did not
24 record the off the clock hours worked allegedly at issue, made this claim – the strongest
25 claim in the case – a challenging, though not impossible, claim on which to prevail.

26 22. According to Kindred’s records, Class Members worked approximately 102,850 aggregate
27 workweeks from February 24, 2015 to October 24, 2019, during which period there were
28

approximately 243 weeks. Thus, Class Members worked an aggregate of approximately 423 workweeks in each calendar workweek. Adding one extra calendar workweek to reach back to February 14, 2015 (an additional 423 aggregate workweeks),¹⁰ and adding an additional 44 calendar workweeks from October 25, 2019 to the release cutoff date of September 1, 2020 (an additional 18,612 aggregate workweeks), yields a total of 121,885 workweeks during the relevant time period.

23. According to Kindred's records, the average regular hourly rate across all Class Members was approximately \$41.50.

24. Plaintiff estimates that she and other Class Members worked, on average, one hour of undocumented, off the clock work per workweek.¹¹ Plaintiff's estimate is based on her long-term experience working at multiple Kindred SNFs in California, including time spent working as a first level Program Director. *See* Stonehocker Decl. at ¶¶ 2-3. Additionally, while Plaintiff was typically scheduled for 8-hour shifts each weekday, Kindred's data shows that Class Members' shifts were, on average, approximately 6.8 hours each weekday. Thus, for valuation purposes, Plaintiff's off the clock claim is in fact a claim for unpaid straight time at a regular rate of pay.

25. Accordingly, I estimate that if Plaintiff prevailed on class certification and liability on this claim – both highly uncertain prospects – the realistic class value of this claim is approximately $121,885 \times \$41.50 \times 1 = \$5,058,227.50$. I believe that while this claim would be challenging for the reasons discussed herein, this is a reasonable and realistic value to assign to the off the clock claim. However, because approximately 7% of Class Members have agreed to arbitration provisions with class waivers, the adjusted realistic value of this claim is **\$4,704,151.58**.

¹⁰ This claim was valued with a four-year statute of limitation pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.*

¹¹ This estimate is also consistent with Kindred's estimate in its Notice of Removal. *See* Dkt. No. 1 at ¶ 38.

Failure to Pay Wages When Due (Cal. Lab. Code §§ 201-203)

26. Cal. Lab. Code §§ 201 and 202 require employers to pay wages earned and unpaid within a certain time frame if an employee quits (within 72 hours) or is discharged (immediately). However, Cal. Lab. Code § 203 provides for “waiting time” penalties assessed only when such failure to pay wages when due is “willful.”
27. A finding of willfulness is precluded when there is a “good faith dispute” as to whether an employee is owed wages. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 325 (2005) (“A good faith belief in a legal defense will preclude a finding of willfulness.”). Cal. Code Regs., tit. 8, § 13520 provides that a “good faith dispute” that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a “good faith dispute.” The “settled meaning of ‘willful,’ as used in § 203, is that an employer has *intentionally* failed or refused to perform an act which was required to be done.” *Id.* at 1204 (2008) (emphasis added); *see also Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314 (2005) (finding “willful” conduct where employer was in fact aware that employees were not being fully compensated for their time); *Willner v. Manpower Inc.*, 35 F. Supp. 3d 1116, 1131 (N.D. Cal. 2014) (“a ‘knowing and intentional’ violation requires a showing that the defendant *knew* that facts existed” that would result in liability) (emphasis added)).¹²

¹² *Willner* discussed penalties under Cal. Lab. Code § 226, but as discussed here and below, the scienter requirements for sections 203 and 226 have been interpreted to be the same. *See Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1090 (N.D. Cal. 2019) (discussing similarities between the scienter requirements of Cal. Lab. Code § 226 and Cal. Lab. Code § 203 and concluding “the § 226 good faith inquiry mirrors the § 203 good faith inquiry”) (citing cases).

28. I have significant concerns that Kindred would be able to successfully assert that it could not have “willfully” failed to pay Class Members wages when due when it appears that, in light of Kindred’s policies and app attestation requirement, it had no classwide actual knowledge that Class Members worked off the clock hours. While Plaintiff may have been able to prove that Kindred *should have* known Class Members were working off the clock, and while Plaintiff may have been able to rebut the *Brinker* presumption that Class Members were not working when they were off the clock, it is another matter to present classwide evidence that Kindred in fact *knew* that Class Members were working off the clock, thus subjecting it to waiting time penalties.

29. Moreover, the potential problems relating to class certification of the off the clock claim is directly relevant to class certification of this claim: “Because waiting time penalties may only be incurred for wages owed, absent common questions regarding whether [a defendant] failed to compensate its employees for off the clock work, the Court finds no common question regarding [a defendant’s] liability for waiting time penalties. *Howard v. CVS Caremark Corp.*, 2014 WL 11497793, *13 (C.D. Cal. Dec. 19, 2014), *aff’d*, 628 F. App’x 537 (9th Cir. 2016) (internal citation omitted).

30. For these reasons, Plaintiff concludes that the realistic value of this claim is likely \$0.¹³

Failure to Provide Meal Periods and to Authorize and Permit Rest Periods (Cal. Lab Code §§ 226.7 512, Wage Orders 4 and/or 5 and the corresponding California Code of Regulations)

31. Cal. Lab. Code § 512, Wage Orders 4 and/or 5 and the corresponding California Code of Regulations generally require employers to provide employees with one 30-minute duty-

¹³ Meritless claims are “worth essentially nothing,” and “[c]onsideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate.” *Parker v. Time Warner Entm’t Co., L.P.*, 239 F.R.D. 318, 339 (E.D.N.Y. 2007) (citing *In re WorldCom, Inc. Securities Litig.*, 388 F.Supp.2d 319, 343 (2d Cir. 2005). Indeed, “[i]t is fine to release a claim without compensation if the value of the claim is zero.” Newberg on Class Actions § 13:60 (5th ed.).

1 free meal period if such employee works more than five hours in a day. *See Brinker*, 53
2 Cal. 4th at 1034 (adopting “make available” standard for meal period claims).
3 Additionally, Wage Orders 4 and/or 5 and the corresponding California Code of
4 Regulations require employers to “authorize and permit” all employees to take one 10-
5 minute duty-free rest period for every four hours worked each day, or major fraction
6 thereof.

7 32. In my experience, meal period claims are frequently difficult to certify absent policies that
8 are facially illegal and/or policies that effectively prevent employees from taking such
9 breaks. Neither is the case here. While Plaintiff could argue that productivity standards
10 required Class Members to work during meal and/or rest periods, there does not appear to
11 be an objective way to prove liability for meal or rest period claims on a classwide basis.
12 While Plaintiff would argue there is an objective connection between PCRs and general
13 off the clock work (though there are problems with this theory as discussed above), it is
14 far less clear that PCRs at or exceeding 85% automatically resulted in missed meal or rest
15 periods. For example, on a given day, a Class Member with a 95% PCR might have
16 worked 20 minutes off the clock, having taken fully compliant meal and rest periods.
17 While theoretically it would have been possible for Plaintiff to obtain declarations from
18 Class Members on this issue, it is equally likely that Kindred would have been able to
19 obtain competing declarations, perhaps necessitating individualized determinations on
20 these claims. Moreover, even expert analysis on time records would be of limited utility,
21 as the class members regularly decided on their own when to take their meal and rest
22 periods, and any deviation by them from the meal and rest break policy could have been
23 for numerous reasons. Moreover, such records would not indicate one way or another if or
24 when any work was being done on breaks, and, again, Class Members were required to
25 attest that they did not work off the clock hours each day, and Kindred’s policies of
26 requiring Class Members to punch out and back in for meal periods, as well as the app’s
27 off the clock attestation requirement, would make liability on this claim difficult to
28

1 establish. Indeed, these were the reasons Plaintiff did not assert class meal and rest period
 2 claims in her Original and First Amended Complaints. *See Koval v. Pacific Bell*
 3 *Telephone Co.*, 232 Cal.App.4th 1050, 1063 (2014) (meal and rest period violations
 4 certifiable only if there is a means of “establish[ing] classwide liability”); *see also Dailey*
 5 *v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 989 (2013) (“For class certification
 6 purposes, then, [plaintiff] was required to present substantial evidence that proving both
 7 the existence of [defendant’s] uniform policies and practices and the alleged illegal effects
 8 of [defendant’s] conduct could be accomplished efficiently and manageably within a class
 9 setting.”).

10 33. For these reasons, Plaintiff concludes that the realistic value of this claim is likely \$0.

11 **Failure to Provide Accurate Pay Statements (Cal. Lab. Code § 226)**

12 34. Cal. Lab. Code § 226 requires employers to provide its employees, at the time of payment,
 13 an itemized statement showing certain information listed in § 226(a)(1)-(9). However, a
 14 violation of § 226 is actionable only if it is “knowing and intentional.” Accordingly,
 15 courts have permitted employers to assert a good faith defense to the claim at or after trial.
 16 Cal. Lab. Code § 226(e). *Magadia*, 384 F. Supp. 3d at 1090 (discussing similarities
 17 between the scienter requirements of Cal. Lab. Code § 226 and Cal. Lab. Code § 203 and
 18 concluding “the § 226 good faith inquiry mirrors the § 203 good faith inquiry”) (citing
 19 cases); *Woods v. Vector Marketing Corporation*, 2015 WL 2453202, *4 (N.D. Cal., May
 20 22, 2015) (same) citing *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1219 (2008)
 21 (affirming trial court judgment, which “determined Cintas’s violation of the [Living Wage
 22 Ordinance] was not willful, [and] declined to impose the higher penalty rates plaintiffs
 23 sought,” including penalties under Section 226); *see also Dalton v. Lee Publications, Inc.*,
 24 2011 WL 1045107, *5 (S.D. Cal. Mar. 22, 2011) (wage statement penalties do not apply
 25 when a defendant acts “with[out] the requisite scienter”).

26 35. For the reasons discussed with respect to Plaintiff’s waiting time claims, Plaintiff believes
 27 it would be very difficult to prove a “knowing and intentional” violation of § 226.
 28

Moreover, it may be difficult to find an employee with a § 226 claim that is not time barred willing to come forward to assert the claim.¹⁴

36. Therefore, Plaintiff believes the realistic value of this claim is \$0.

Failure to Keep Accurate Records (Cal. Lab. Code § 1174; Wage Orders 4 and/or 5 and the corresponding California Code of Regulations)

37. Cal. Lab. Code § 1174 requires employers to maintain payroll records pertaining to its employees, and Cal. Lab. Code § 1174.5 provides for penalties for willful failures to maintain such records. Likewise, Wage Order 4 and 5 as well as the corresponding California Code of Regulations also require employer to maintain accurate payroll records pertaining to its employees. However, a finding that an employer's failure to comply with § 1174 was in good faith precludes liability for the violation. *Dalton*, 2011 WL 1045107, *6.

38. For the reasons discussed with respect to waiting time and wage statement claims, Plaintiff believes it would be difficult to prove a "knowing and intentional" (*i.e.*, not good faith) violation of § 1174, and also notes that it may be difficult to find an employee with a § 1174 claim that is not time barred willing to come forward to assert the claim.

39. Accordingly, Plaintiff believes the realistic value of this claim is \$0.

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¹⁴ As discussed in Plaintiff's Motion, notwithstanding the fact that Kindred would assert a statute of limitations defense to this claim (and all claims with a one year statute of limitations) if Plaintiff were to assert them in a non-settlement complaint, Plaintiff is permitted to assert such claims in a settlement complaint and agree to the class release of the claims. *See Harvey v. Morgan Stanley Smith Barney LLC*, No. 18-CV-02835-WHO, 2020 WL 1031801, *17 (N.D. Cal. Mar. 3, 2020) (a defendant may waive a statute of limitations affirmative defense for purposes of entering into a class settlement); *see also Corcoran v. CVS Health*, 2019 WL 6250972, *5 (N.D. Cal. Nov. 22, 2019) (concluding that the typicality requirement was satisfied where other class members were "very likely to be subjected to the same statute of limitations defense as both [class representatives]," and the class representatives therefore were not "uniquely subjected to the statute of limitations.").

Penalties under PAGA (Cal. Lab. Code § 2698, et seq.)

40. Cal. Lab. Code § 2699 generally permits an aggrieved employee to recover penalties for Labor Code violations on behalf of the Labor and Workforce Development Agency. Plaintiff believes PAGA penalties could have been realistically recoverable in this action on the off the clock claim (for the reasons discussed above), as well as a claim for deficient wage statements under Cal. Lab. Code § 226.3.

• **Off the Clock Based PAGA Claim**

41. In addition to the risks associated with the off the clock claim discussed above, there are several risks associated with PAGA claims in general and this PAGA claim in particular. First, while PAGA claims do not need to meet Rule 23 standards for class certification, courts have imposed a “manageability” requirement and have stricken PAGA claims where trial would be unmanageable. *See Litty v. Merrill Lynch & Co., Inc.*, 2014 U.S. Dist. LEXIS 160448, *6 (C.D. Cal. 2014) (striking PAGA claim where “[t]he circumstances of this case make the PAGA claim unmanageable because a multitude of individualized assessments would be necessary.”); *Amey v. Cinemark USA Inc.*, 2015 U.S. Dist. LEXIS 63524, *50-51 (N.D. Cal. 2015) (“[W]hen the evidence shows, as it does here, that numerous individualized determinations would be necessary to determine whether any class member has been injured by [defendant’s] conduct, then allowing a representative action [under PAGA] to proceed is inappropriate.”).

42. Second, as with other claims with one-year statutes of limitation, it may be difficult to find an employee with a PAGA claim that is not time barred willing to come forward.

43. Third, there is the risk that PAGA penalties would be reduced by the Court to a fraction of what might have been recovered as damages if it determines that Kindred’s Labor Code violations were in good faith. *See* Cal. Lab. Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”); *Lusardi Construction Co.*

1 v. *Aubry*, 1 Cal. 4th 976, 996-97 (1992) (“courts refuse to impose civil penalties against a
2 party who acted with a good faith and reasonable belief in the legality of his or her
3 actions.”).

4 44. Ultimately, however, if Plaintiff were to prevail on her off the clock claim, she necessarily
5 would have to prove that Kindred knew or should have known of PAGA Releasees’ off
6 the clock work, making a discretionary reduction less likely. Similarly, if Plaintiff were to
7 prevail on her overtime claim on a classwide basis, she likely would have been able to
8 show that trial of an attendant claim is manageable. Thus, since I have assigned a
9 substantial, but realistic, value to the off the clock claim – again, the only non-PAGA
10 claim that I believe does have realistic value – it would be appropriate to also assign a
11 corresponding value to the PAGA claim arising from off the clock violations.

12 45. According to extrapolation of Kindred’s data, there are approximately 23,090 pay periods
13 during the relevant time period (February 14, 2018 to September 1, 2020). Plaintiff
14 believes she would be able to prove that all aggrieved employees (*i.e.*, PAGA Releasees)
15 worked off the clock in each of their respective pay periods.

16 46. PAGA provides that each failure to pay each employee results in a \$50 penalty for each
17 pay period in which there was a violation. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.
18 App. 4th 1157, 1209 (2008).¹⁵ Accordingly, I believe that while this claim would be
19 challenging for many of the same reasons as the off the clock-claim, and a PAGA claim
20 has additional hurdles that must be overcome, **\$1,154,500** (23,090 aggregate pay periods
21 during the relevant time period x \$50) is a reasonable and realistic valuation of a PAGA
22
23
24

25 ¹⁵ The increased “subsequent violation” penalty of \$100 attaches when an employer is on
26 notice that its conduct violates the Labor Code. *Id.* There is no indication that Kindred was
27 informed, prior to this case, that PAGA Releasees were allegedly working off the clock work at
28 SNFs.

claim based on off the clock work.¹⁶

• **Wage Statement-Based PAGA Claim**

47. Additionally, while I do not believe a wage statement claim under Cal. Lab. Code § 226 has value in this case, Cal. Lab. Code § 226.3, which provides for a civil penalty recoverable only through a PAGA action for deficient wage statements, could be a viable PAGA claim. Critically, § 226.3 does not contain the scienter requirement necessary to recover under § 226. *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017). Thus, the primary reasons I believe it would be difficult to recover under § 226 do not apply to a PAGA claim brought pursuant to § 226.3.
48. If Plaintiff prevails on her off the clock claim, I believe she would also necessarily be able to show that PAGA Releasees' paystubs did not record all hours worked in violation of § 226(a), and would therefore be able to recover in a § 226.3-based PAGA action.
49. Section 226.3 provides for a \$250 civil penalty per employee per violation in an initial citation, and a \$1,000 per employee civil penalty per employee for subsequent violation.¹⁷ Additionally, unlike § 226, § 226.3 does not include § 226's \$4,000 statutory cap on penalties. Accordingly, I estimate that **\$5,772,500** (23,090 aggregate pay periods during the relevant time period x \$250) is a reasonable and realistic valuation of a PAGA claim based on § 226.3.
50. In sum, I believe the reasonable and realistic overall value of a PAGA claim under the circumstances of this case is approximately **\$6,927,000**.

¹⁶ Kindred's arbitration provisions exclude PAGA claims from their scope (as, generally, arbitration provisions in California must), so this claim is not subject to a reduction in value on the grounds that PAGA Releasees would be unable to obtain relief under PAGA. *See, e.g., Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425 (9th Cir. 2015).

¹⁷ As with other PAGA claims, it appears § 226.3's increased "subsequent violation" penalty of \$1,000 attaches when an employer is on notice that its conduct violates the Labor Code. *Id.* at 614. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008). There is no indication that enhanced subsequent violation penalties would apply here.

Allocation of PAGA Penalties

51. The Agreement allocates \$130,000 to the PAGA claims (or 3.8% of the realistic value of the PAGA claims), with \$97,500 payable to the Labor and Workforce Development Agency (“LWDA”) and \$32,500 payable to PAGA Releasees. This amount, which represents approximately 1.9% of the PAGA valuation, and 6.5% of the Gross Settlement Fund, is pegged to the valuation of the PAGA claim and corresponding case law regarding PAGA allocations. *See Haralson*, 383 F. Supp. 3d at 972 (“In this district, courts have raised concerns about settlements of less than 1% of the total value of a PAGA claim.”) (citing cases). *Compare also Ortiz v. Genco, Inc.*, No. 4:16-CV-04601-YGR, 2019 WL 1780577, *5, 14 (N.D. Cal. Apr. 23, 2019) (approving settlement with PAGA allocation equal to approximately 4.8% of the gross settlement fund).¹⁸

OTHER RISKS OF FURTHER LITIGATION

52. The above valuation of claims documents specific risks of further litigation. However, there are three other broader major risks.

53. First, as previously mentioned with respect to the off the clock claim, Kindred’s data shows that approximately 7% of Class Members have signed arbitration provisions with

¹⁸ See also *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, *8 (N.D. Cal. Oct. 11, 2016) (approving \$20,000 total PAGA settlement in a case with \$13,000,000 in potential PAGA exposure) (.15%); *Syed v. M-I, L.L.C.*, 2017 WL 714367, *13 (E.D. Cal. Feb. 22, 2017) (approving \$100,000 total PAGA settlement in a case with \$53,600,000 in potential PAGA exposure) (.19%).

There is also a substantial history of court approval of nominal PAGA settlements. *See, e.g., Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. Feb. 16, 2011) (approving \$10,000 PAGA allocation out of \$6.9 million common-fund settlement); *Franco v. Ruiz Food Products, Inc.*, 2012 WL 5941801, *13 (E.D. Cal. Nov. 27, 2012) (approving \$10,000 PAGA allocation out of \$2.5 million common-fund settlement); *Garcia v. Gordon Trucking*, 2012 WL 5364575, *3 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation out of \$3.7 million settlement), among many other similar approvals.

Notably, counsel in *Cashon* did not attempt to value PAGA claims, though presumably exposure would have been significant given the strength of that case. *See Cashon* Dkt. No. 84 at ¶ 44 (valuing only claims for unpaid travel time and unpaid rest breaks); *see also* Memo. at n. 17.

class action waivers. These Class Members would likely be prevented from recovering on any class claims, though they would not be prevented from recovering on a PAGA claim. *See, e.g., Sakkab, supra.*

54. Second, there is the risk that Kindred could successfully appeal this Court's ruling that the *Cashon* settlement does not bar Plaintiff's class claims. While I am confident that this Court's ruling is correct, it is nonetheless a serious risk: Obviously, a reversal on that issue would be catastrophic to the Class. Moreover, pursuant to the *Cashon* settlement agreement, it could result in Plaintiff being liable for Kindred's attorneys' fees and costs associated with not just the initial Motion for Summary Judgment, but also for the related appeal.

55. Third, there is the risk inherent in class action litigation (and litigation in general) that Kindred might successfully appeal any other adverse orders.

VALUATION: CONCLUSION

56. Based on the above analysis, I believe the total realistic exposure to Kindred in this case was approximately **\$11,631,141.58**. Given the settlement value of 17% of the realistic recovery in this case, where Class Members will be entitled to, on average, approximately \$880 from the Gross Settlement Fund, and taking into account all issues and risks related to liability, damages and class certification, and also considering the case law regarding fair, reasonable, and adequate settlements both in general and specific to off the clock cases, I believe this is an excellent settlement for the Class Members and the PAGA Releasees.

MISCELLANEOUS

57. I am informed that there are approximately 2,268 Class Members and/or PAGA Releasees subject to this Settlement.

58. A point of negotiation during mediation was whether the release period would end only when the settlement becomes formally "Final" (*i.e.*, when no further review of the final approval order is available), or at some sooner date certain. The negotiation of September

1, 2020, as the release cutoff date, rather than an open-ended release cutoff date, provides a significant potential benefit to Class Members and PAGA Releasees currently employed by Kindred.

59. On or about June 15, 2020, Plaintiff sent to the Labor and Workforce Development Agency (“LWDA”) discussing the facts and theories supporting her claim for PAGA penalties in the concurrently filed Second Amended Complaint. The LWDA declined to respond to Plaintiff’s correspondence. As required by statute, the LWDA will be notified of this proposed settlement shortly after this Motion is submitted to the Court.

60. I am informed that counsel for Defendant is preparing CAFA Notices that will be timely distributed to all applicable state and/or federal government agencies.

61. I have no financial or personal relationships with the parties’ agreed upon *cy pres* beneficiary, the First Responders Children’s Foundation COVID-19 Emergency Response Fund. I am informed that counsel for Defendants in this action likewise do not have a financial or personal relationship with the *cy pres* beneficiary.

62. Plaintiff will inform the Court of any objections and/or requests for exclusion from the Class Settlement in her final approval papers.

SETTLEMENT ADMINISTRATOR

63. I obtained bids from three different settlement administrators: Simpluris, Rust Consulting, and Settlement Services, Inc. (a subsidiary of Epiq Global). All three firms are highly respected settlement administrators.

64. Ultimately, I proposed, and defense counsel agreed to, Simpluris as Settlement Administrator for this case. Simpluris’s bid was the least expensive, its proposal was comprehensive and thorough, its terms and conditions were clear, and I felt comfortable with the quality and frequency of communication with the company’s representative during the bidding process.

65. I have no financial or personal relationships with Simpluris or any of its employees.

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ATTORNEY EXPERIENCE

66. I received my undergraduate degree from Yale University in 2005, and my J.D. from the University of San Francisco in 2010. I am currently the principal of the Law Office of Matthew D. Carlson. I also work in an “Of Counsel” capacity with prominent plaintiff-side class action firm Lichten & Liss-Riordan, P.C. I have partnered with or worked for Lichten & Liss-Riordan on numerous wage and hour class actions since late 2013.
67. In September 2013, shortly after starting my first solo practice, Carlson Legal Services, I filed the second “gig economy” misclassification class action case in California, *Cotter v. Lyft, Inc.*, Case No. 3:13-cv-04065-VC (N.D. Cal.). Since then, I have worked extensively on all facets of various types of wage and hour class action cases, including in this case, *Cotter; O’Connor, et al. v. Uber Technologies, Inc.*, Case No. 3:13-cv-03826-EMC (N.D. Cal.); *Lawson v. GrubHub Inc.*, Case No. 3:15-cv-05128-JSC (N.D. Cal.); *Singer, et al. v. Postmates, Inc.*, Case No. 4:15-cv-01284-JSW (N.D. Cal.); *Marciano, et al. v. DoorDash, Inc.*, Case No. CGC-15-548101 (S.F. Sup. Ct.); *Lawson v. Jolt Delivery, LLC*, Case No. BC632935 (LA Sup. Ct.); *Sims v. Lugg, Inc.*, Case No. CGC-16-550654 (SF Sup. Ct.); *Quigley v. Eaze Solutions, Inc.*, No. CGC-16-550805 (S.F. Sup. Ct.); and *Levin v. Caviar, Inc.*, Case No. 3:15-cv-01285-EDL (N.D. Cal.); *Robinson, et al. v. Ritz-Carlton Hotel Company*, Case No. CGC-15-546585 (S.F. Sup. Ct.); *O’Grady v. Merchant Exchange Productions, Inc.*, Case No. CGC-15-547796 (S.F. Sup. Ct.); *Conde v. 20/20 Communications, Inc., et al.*, Case No. 15-cv-04080-KAW (N.D. Cal.); *Gill v. 314e Corporation*, Case. No. 4:17-cv-01062-JD (N.D. Cal.); *Colopy, et al. v. Uber Technologies, Inc.*, Case No. CGC-16-549696 (S.F. Sup. Ct.); *Iglesias v. Homejoy, Inc.*, Case No. 3:15-cv-01286-EMC (N.D. Cal.); *Hughes v. S.A.W. Entertainment, LTD*, Case No. 4:16-cv-03371-LB (N.D. Cal.); *Mehraban v. Gold Club – S.F. LLC*, 3:17-cv-5288-LB (N.D. Cal.); *Ziglar, et al. v. Express Messenger Systems, Inc.*, Case No. 2:16-cv-02726-PHX-SRB (D. Az.); *Valencia v. Saucey, Inc.*, Case No. BC649838 (L.A. Sup. Ct.); *Ortega v. The Spearmint Rhino Companies Worldwide, Inc., et al.*, Case No. 5:17-cv-00206-JGB-

KK (C.D. Cal.); *Fagen, et al. v. Transworld Systems, Inc.*, Case No. BC660039 (L.A. Sup. Ct.); *Washio Wage and Hour Cases*, Case No. CJC-15-004857 (S.F. Sup. Ct.); and *Arce v. Valley Prune, LLC*, Case No. 12-cv-2772-JM (E.D. Cal.).

68. Prior to September 2013, I worked as an associate for the highly regarded Bay Area plaintiff-side class action firm Schneider Wallace, et al., and before that I worked as employment counsel for plaintiff-side firm Hersh & Hersh, P.C. While employed by those firms, I worked on a wide range of class and individual wage and hour matters, including, for example, cases involving off the clock work, exemptions, missed meal and rest breaks, associated penalties, and many other wage and hour issues. *E.g.*, *Pablo, et al. v. Servicemaster Global Holdings, Inc.*, Case No. 08-cv-03894-SI (N.D. Cal.); *Lopez v. Marcus & Millichap Real Estate Investment Services, et al.*, Case No. CGC-09-493705 (S.F. Sup. Ct.); *Baricuatro v. Indus. Pers. & Mgmt. Servs., Inc., et al.* Case No. 11-cv-2777-KE (E.D. La.).

69. My experience in wage and hour class actions is comprehensive. In numerous cases, including but not limited to the above cases, I have drafted complaints, propounded and responded to written discovery, taken and defended depositions, made and opposed procedural and substantive motions (including, for example, motions to dismiss, motions for summary judgment, motions for class certification, motions regarding arbitration provisions, motions *in limine*, and post-trial motions), assisted with trial, participated in mediations and settlement conferences, prepared all settlement-related papers and court submissions at all stages of the settlement approval process (including successfully defending the *Cotter* settlement on appeal by way of a successful motion for summary affirmance), and worked on all components of settlement administration, including acting as the primary attorney point of contact in classes ranging in size from about 800 people to exceeding 200,000 people.

70. The wage and hour cases I have worked on have required careful analysis of and discovery concerning all manner of substantive Labor Code-related issues including, for

example, issues concerning what constitutes “time worked” , unpaid straight time and overtime, meal and rest periods, minimum wage, reimbursement, assorted claims for penalties (under substantive Labor Code provisions as well as PAGA), and claim valuation. These issues have been litigated in various contexts, including on Motions to Dismiss, Motions for Summary Judgment, Motions for Class and/or Conditional Certification, Motions for Settlement, at trial, and on appeal.

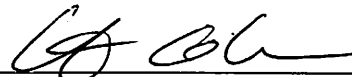
71. I have had substantial roles in wage and hour class settlements of various sizes, including, for example, *Cotter* (\$27 million), *O'Connor* (\$100 million)¹⁹, *Singer* (\$8.75 million), *Marciano* (\$5 million), *Levin* (\$1.875 million), *Quigley* (\$975,000), in addition to class and individual settlements in many of the other cases listed above.

72. Several wage and hour settlements of which I have been a part in the last several years have been scrutinized to an unusual degree given their high-profile nature. Those processes have made me highly attuned to all aspects of class settlements and I closely examine every settlement I negotiate for substantive and procedural fairness.

73. In light of my experience, and specifically my experience litigating and resolving wage and hour class actions, I strongly believe this settlement is an excellent result for Class Members and should be approved.

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

Executed October 2, 2020, at Orchard Park, New York.



MATTHEW D. CARLSON

¹⁹ The initial *O'Connor* settlement was rejected by Judge Chen, and, after the Supreme Court’s decision in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), which resulted in the exclusion of the vast majority of Uber drivers from the litigation, settled for \$20 million. See *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2019 WL 4394401 (N.D. Cal. Sept. 13, 2019), *aff’d*, No. 19-17073, 2019 WL 7602362 (9th Cir. Dec. 20, 2019), *cert. denied sub nom. Mendel v. Uber Techs. Inc.*, No. 19-8075, 2020 WL 2621861 (U.S. May 26, 2020).

EXHIBIT 1

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SARAH STONEHOCKER, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

KINDRED HEALTHCARE
OPERATING, LLC and DOES 1 through
25,

Defendants.

Case No. 4:19-cv-02494-YGR

**JOINT STIPULATION AND CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint Filed: February 14, 2019

This Joint Stipulation and Class and Representative Action Settlement Agreement and Release (“Settlement,” “Agreement” or “Settlement Agreement”) is made and entered into by on the one hand Plaintiff SARAH STONEHOCKER, individually and as representative of the Class, as defined below (“Plaintiff or “Class Representative”), and on the other hand Defendant KINDRED HEALTHCARE OPERATING, LLC (“KHO”) and the defendants to be added in the proposed Second Amended Complaint, KINDRED REHAB SERVICES, LLC, KINDRED REHAB SERVICES, INC., REHABCARE GROUP EAST, LLC, REHABCARE GROUP EAST, INC., AMERICAN VITALCARE, LLC, and REHABCARE GROUP OF CALIFORNIA, LLC (collectively “Defendants”).

This Agreement is subject to the approval of the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, 28 U.S.C. § 1711 *et seq.* and California Labor Code section 2699, and is made for the sole purpose of attempting to consummate settlement of this Action on a class-wide and representative basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting approval of the PAGA Settlement, as defined below, final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Agreement is void and of no force or effect whatsoever.

NOW THEREFORE, in consideration of the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth below, Plaintiff, individually and as representative of the Class, and Defendants agree that the Action shall be, and is finally and fully compromised and settled on the following terms and conditions:

1. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION

1.1 On February 14, 2019, Plaintiff filed a putative class action in San Francisco County Superior Court entitled: *Sarah Stonehocker, on behalf of herself and all others similarly situated, vs. Kindred Healthcare Operating, LLC*, Case No. CGC-19-573756 (the “Complaint”). On April 1, 2019, Plaintiff filed a First Amended Complaint in the Action (the “First Amended Complaint”).

1.2 The Complaint and the First Amended Complaint allege the following causes of action:

(1) Failure to Pay Overtime Wages [Cal. Labor Code §§ 510, 1194, 1198; Wage Order No. 4];

(2) Failure to Pay Wages When Due [Cal. Labor Code §§ 201-203]; and (3) Unlawful Business Practices [Cal. Bus. & Prof. Code § 17200 *et seq.*].

1.3 On May 8, 2019, KHO removed the class action to the United States District Court, Northern District of California, where the action is currently pending as Case No. 4:19-cv-02494-YGR.

1.4 Prior to mediation, the Parties engaged in discovery, including an exchange of information and documentation about *inter alia*: the number of current and former putative class members who worked during the relevant time period; Defendants' operational structure, including breakdown of locations; Defendants' timekeeping, meal period and rest break policies; documents evidencing Defendants' communications, training materials, and procedures for managing payment for all hours worked, meal periods and rest breaks; electronic time and pay records for putative class members; arbitration provisions; data necessary to value Plaintiff's claims; Defendants' PatientPlus Bonus Plans; and other relevant information, including management-level correspondence, data in Plaintiff's possession and Plaintiff's personnel and payroll file. Additionally, prior to mediation, KHO filed, and Plaintiff opposed, an early summary judgment motion ("MSJ") regarding the release Plaintiff signed as part of another class action settlement entitled *Cashon v. Kindred Healthcare Operating, Inc., et al.*, United States District Court for the Northern District of California No. 3:16-cv-04889-RS. Following the Court's denial of KHO's MSJ in September 2019, the Parties focused their efforts on resolving the Action and the Parties agreed to proceed with a mediation before a neutral third party.

1.5 On May 20, 2020, the Parties participated in a mediation before Tripper Ortman in an attempt to negotiate a resolution of the Action, a highly-respected neutral mediator who specializes in wage and hour mediations. With mediator Ortman's assistance, the Parties agreed, subject to approval by the Court, to the Settlement of the Action. The Parties further agreed to enter into this Agreement to memorialize their settlement of the Action.

1.6 As part of this Settlement, on or about June 15, 2020, Plaintiff submitted a notice to the LWDA pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*) (the "PAGA Notice"). The PAGA Notice alleged the following causes of action: (1) Failure to Pay Wages

(including minimum, straight, and overtime wages) [Cal. Labor Code §§ 510, 1194, 1197, 1198; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (2) Failure to Pay Wages When Due [Cal. Labor Code §§ 201-204]; (3) Failure to Provide Compliant Meal Breaks [Cal. Labor Code §§ 226.7 and 512; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (4) Failure to Authorize and Permit Compliant Rest Breaks [Cal. Labor Code § 226.7 and Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; and (5) Failure to Issue Accurate Itemized Wage Statements and Maintain Proper Payroll Records [Cal. Labor Code §§ 226, 1174 and 1174.5; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]. The LWDA did not respond to Plaintiff's notice during the time prescribed by Cal. Lab. Code § 2699.3.

1.7 The Parties believe this Settlement is a fair, adequate and reasonable Settlement of this Action and have arrived at this Settlement after lengthy, extensive arms-length negotiations, facilitated by an experienced wage and hour class action mediator, taking into account all relevant factors, present and potential. This Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement Agreement.

1.8 Defendants denied and continue to deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the Action. Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged in the Action. Defendants contend that they complied in good faith with California wage and hour laws and has dealt legally and fairly with Plaintiff and Class Members. Defendants further deny that, for any purpose other than settling the Action, these claims are appropriate for class or representative treatment. Nonetheless, Defendants have concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to dispose of burdensome and protracted litigation, to permit the operation of Defendants' business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendants have, therefore, determined

that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

1.9 The Settlement set forth herein intends to achieve the following: (1) entry of an order approving the PAGA Settlement; (2) entry of an order approving the Class Settlement; (3) entry of judgment of the Action; (4) discharge of Released Parties from liability for any and all of the PAGA Claims by the PAGA Releasees; (5) discharge of Released Parties from liability for any and all of the Released Claims by Plaintiff Class Members; and (6) discharge of Released Parties from liability for any and all claims that Plaintiff may have against them.

2. **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

2.1 “**Action**” refers to the class action litigation entitled *Sarah Stonehocker, on behalf of herself and all others similarly situated, vs. Kindred Healthcare Operating, LLC*, which is pending in the United States District Court for the Northern District of California as Case No. 4:19-cv-02494-YGR.

2.2 “**Administrative Expenses**” include all costs and expenses associated with and paid to the Settlement Administrator for the administration of the Settlement and related matters as described in this Agreement, which are anticipated not to exceed \$22,500.00.

2.3 “**Agreement**,” “**Settlement**” and “**Settlement Agreement**” mean this Joint Stipulation and Class and Representative Action Settlement Agreement and Release, including all attached exhibits.

2.4 “**CAFA**” shall mean the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.*

2.5 “**Claims**” means all claims for wages and related penalties actually alleged or that could have been alleged in the Action by the Plaintiff, on behalf of herself and the Class Members, based on the facts alleged in the Complaint, the Amended Complaint, the proposed Second Amended Complaint, and the PAGA Notice including but not limited to: (1) Failure to Pay Wages (including minimum, straight, and overtime wages) [Cal. Labor Code §§ 510, 1194, 1197, 1198; Wage Order

Nos. 4 and 5; and corresponding California Code of Regulations]; (2) Failure to Pay Wages When Due [Cal. Labor Code §§ 201-204]; (3) Failure to Provide Compliant Meal Breaks [Cal. Labor Code § 226.7 and 512; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (4) Failure to Authorize and Permit Compliant Rest Breaks [Cal. Labor Code § 226.7 Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (5) Failure to Issue Accurate Itemized Wage Statements [Cal. Labor Code § 226]; (6) Failure to Maintain Proper Employment Records [Cal. Labor Code §§ 226, 1174 and 1174.5; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (7) Unfair Competition [Business & Professions Code § 17200]; (8) Penalties Pursuant to PAGA; and (9) Failure to Pay Wages pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

2.6 **“Class” and “Class Members”** mean all persons who are or were employed by one or more Defendants as non-exempt Skilled Clinicians to work at a skilled nursing facility in California at any time from February 14, 2015 through September 1, 2020.

2.7 **“Class Counsel”** means Matthew D. Carlson of Law Office of Matthew D. Carlson, 50 Fountain Plaza, Suite 1400, #206, Buffalo, NY 14202.

2.8 **“Class Counsel’s Fees and Expenses”** means the amount awarded to Class Counsel by the Court to compensate them for their fees in prosecuting the Action, not to exceed one-third (1/3) of the Gross Settlement Fund, including any interest, plus reasonable costs and expenses not to exceed \$15,000, subject to approval of the Court.

2.9 **“Class Notice”** means the Notice of PAGA and Class Action Settlement, as set forth in the form of Exhibit C attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members and PAGA Releasees.

2.10 **“Class Pay Periods”** means the number of pay periods worked by Class Members for one or more Defendants during the Settlement Period as regularly recorded on Defendants’ payroll system.

2.11 **“Class Representative”** means Plaintiff Sarah Stonehocker.

2.12 **“Class Settlement”** means the non-PAGA portion of the settlement embodied in this Agreement, which is subject to Court’s preliminary and final approval.

1 2.13 “**Complaint**” means the Class Action Complaint filed by Plaintiff in San Francisco
2 County Superior Court on February 14, 2019.

3 2.14 “**Court**” means the United States District Court for the Northern District of California.

4 2.15 “**Defendants**” mean Kindred Healthcare Operating, LLC, Kindred Rehab Services,
5 LLC, Kindred Rehab Services, Inc., RehabCare Group East, LLC, RehabCare Group East, Inc.,
6 American VitalCare, LLC and RehabCare Group of California, LLC.

7 2.16 “**Defense Counsel**” and “**Counsel for Defendants**” mean Elizabeth Staggs-Wilson,
8 Lisa Lin Garcia, and Alice Wang of Littler Mendelson, P.C.

9 2.17 “**Effective Date**” of this Agreement means the date when all of the conditions set forth
10 in Paragraph 7.7 have occurred.

11 2.18 “**Employee’s Taxes and Required Withholdings**” means the employee’s share of any
12 and all applicable federal, state or local payroll taxes, including those collected under authority of the
13 Federal Insurance Contributions Act (“FICA”), FUTA and/or SUTA on the portion of any Plaintiff
14 Class Member’s Individual Settlement Payment that constitutes wages. The Employee’s Taxes and
15 Required Withholdings will be withheld from and paid out of the Net Settlement Fund.

16 2.19 “**Employer’s Taxes**” means and refers to the employer’s share of corporate federal,
17 state and/or local payroll taxes, including Medicare taxes, Social Security taxes, federal unemployment
18 taxes, state unemployment insurance taxes, and employment training taxes, that is owed on the portion
19 of any Plaintiff Class Member’s Individual Settlement Payment that constitutes wages and any Service
20 Award that constitutes wages. The Employer’s Taxes shall be paid separate and apart from the Gross
21 Settlement Fund.

22 2.20 “**Final Approval Hearing**” means the hearing held to determine whether the Court
23 will enter a Final Approval Order finally approving the Class Settlement and enter a Judgment
24 dismissing the Action consistent with this Agreement.

25 2.21 “**Final Approval Order**” means the Court’s entry of an Order finally approving and
26 granting final approval of the Class Settlement.

27 2.22 “**First Amended Complaint**” means the First Amended Class Action Complaint filed
28 by Plaintiff in San Francisco County Superior Court on April 1, 2019.

2.23 **“Gross Settlement Fund”** means the agreed upon non-reversionary settlement amount totaling One Million Nine Hundred Ninety-Five Thousand Dollars (\$1,995,000.00) to be paid by Defendants in full settlement of the Released Claims and the PAGA Claims asserted in the Action, including the Administrative Expenses, Class Counsel’s Fees and Expenses, any Court approved Service Award, the PAGA Payment, Employee’s Taxes and Required Withholdings, the Net Settlement Fund and all other costs associated with the Settlement.

2.24 **“Individual Settlement Payment”** means the amount which is ultimately distributed to each Plaintiff Class Member from the Net Settlement Fund, net of any Employee’s Taxes and Required Withholdings, separate and distinct from the Plaintiff Class Member’s share of the PAGA Payment.

2.25 **“KHO”** means Kindred Healthcare Operating, LLC.

2.26 **“LWDA”** means the California Labor and Workforce Development Agency.

2.27 **“Mailing Date”** means the date that the Settlement Administrator initially mails by Regular United States Mail the Class Notices to the Class Members and the PAGA Releasees.

2.28 **“Net Settlement Fund”** means the portion of the Gross Settlement Fund available for distribution to Plaintiff Class Members after deduction of Class Counsel’s Fees and Expenses, the Service Award, the Administrative Expenses, all Employees’ Taxes and Required Withholdings which must be remitted on Individual Settlement Payments and the Service Award, and the PAGA Payment.

2.29 **“Notice of Objection”** means a written request by a Class Member to object to this Settlement, which must be completed and filed or mailed in the manner set forth in this Settlement Agreement and the Class Notices.

2.30 **“Notice Period”** means the forty-five (45) calendar day period which begins on the Mailing Date. An Opt-Out Request must be returned to the Settlement Administrator with a postmark dated during the Notice Period to be valid and effective. An objection must be filed with the Court during the Notice Period to be considered. A written notice disputing the number of Class Pay Periods and PAGA Pay Periods worked must be returned to the Settlement Administrator with a postmark dated during the Notice Period for the Plaintiff Class Member to receive the Individual Settlement Payment.

2.31 **“PAGA”** means the California Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*

2.32 **“PAGA Claims”** means all disputes, claims, and/or causes of action set forth in Paragraph 4.4 of this Agreement.

2.33 **“PAGA Notice”** means the notice Plaintiff submitted to the LWDA on or about June 15, 2020 pursuant to PAGA as described in Paragraph 1.6 above.

2.34 **“PAGA Pay Periods”** means the number of pay periods worked by PAGA Releasees for one or more Defendants during the PAGA Settlement Period as regularly recorded on Defendants’ payroll system.

2.35 **“PAGA Payment”** means the payment to the State of California LWDA and the PAGA Releasees in settlement of all claims for PAGA penalties.

2.36 **“PAGA Payment Check”** means the check issued to each PAGA Releasee for his/her/their share of the PAGA Payment.

2.37 **“PAGA Releasees”** means all persons who are or were employed by one or more Defendants as non-exempt Skilled Clinicians to work at a skilled nursing facility in California at any time from February 14, 2018 through September 1, 2020.

2.38 **“PAGA Settlement”** means the PAGA portion of this Agreement, which is subject to Court’s approval.

2.39 **“PAGA Settlement Period”** means the period beginning on February 14, 2018 through September 1, 2020.

2.40 **“Parties”** means Plaintiff, individually and on behalf of all Class Members and all PAGA Releasees, and Defendants.

2.41 **“Plaintiff”** means Sarah Stonehocker.

2.42 **“Plaintiff Class Member”** means each Class Member who has not timely and properly opted out of the Class Settlement pursuant to Paragraph 6.5 of this Agreement.

2.43 **“Preliminary Approval Order and Order Approving PAGA Settlement”** means an order from the Court: (1) preliminarily approving the Class Settlement; and (2) approving the PAGA Settlement.

2.44 “**Released Claims**” or “**Settled Claims**” mean all disputes, claims, and/or causes of action set forth in Paragraph 4.3 of this Agreement.

2.45 “**Released Parties**” shall mean include Defendants, RehabCare Group Management Services, LLC, RehabCare Group, Inc., RehabCare Hospital Holdings, L.L.C., and any of its or their past, present and future direct or indirect parents, subsidiaries, affiliates and any skilled nursing facility clients as to whom any Class Member or PAGA Releasee may have provided services through any or all Defendants as well as each of its or their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with any or all Defendants.

2.46 “**Second Amended Complaint**” means the proposed Second Amended Class Action Complaint that Plaintiff is to file in the Action as described in Paragraph 7.2 below. A copy of the proposed Second Amended Complaint subject to the Court’s approval is attached hereto as **Exhibit B**.

2.47 “**Service Award**” means any additional monetary payment provided to Sarah Stonehocker in her capacity as Class Representative, not to exceed \$5,000.00, for her efforts and risks on behalf of the Class in the Action, as determined by the Court, as well as general consideration for the general release and waiver by Plaintiff as set forth in Paragraph 4.7 of this Agreement.

2.48 “**Settlement**” means the settlement of the Action effectuated by this Agreement between the Parties (including the Class Settlement and PAGA Settlement).

2.49 “**Settlement Administrator**” means an experienced, neutral third-party administrator that is approved by the Parties and the Court responsible for administration of the Settlement and related matters.

2.50 “**Settlement Period**” means the period from February 14, 2015, through September 1, 2020.

2.51 “**Settlement Proceeds Distribution Deadline**” means a date that is forty (40) calendar days after the Effective Date.

2.52 “**Skilled Clinicians**” are all individuals who have held one or more positions included in the job title list attached hereto as **Exhibit A**.

1 **3. SETTLEMENT PAYMENT PROVISIONS**

2 3.1 Allocation of Gross Settlement Fund. Subject to Court approval and the conditions
3 specified in this Agreement, and in consideration of the mutual covenants and promises set forth
4 herein, Defendants agree to make a total settlement payment under this Agreement in the amount of
5 One Million Nine Hundred Ninety-Five Thousand Dollars (\$1,995,000.00), *i.e.*, Gross Settlement
6 Fund. The Gross Settlement Fund includes, but is not limited to, payments to be made for (1) Class
7 Counsel's Fees and Expenses; (2) Plaintiff's Service Award; (3) Administrative Expenses; (4) PAGA
8 Payment; (5) Employee's Taxes and Required Withholdings; (6) and the Net Settlement Fund and all
9 other costs associated with the Settlement. The Parties agree, subject to Court approval, that the Gross
10 Settlement Fund shall be apportioned as follows:

11 (a) Attorneys' Fees and Costs. At the Final Approval Hearing, Class Counsel will
12 apply to the Court for an award of attorneys' fees incurred by Class Counsel in an amount not to
13 exceed Six Hundred Fifty Thousand Dollars (\$665,000.00), which is one-third (1/3) of the Gross
14 Settlement Fund. At the Final Approval Hearing, Class Counsel will also apply to the Court for
15 recovery of actual costs incurred by Plaintiff's counsel in the Action in an amount not to exceed Fifteen
16 Thousand Dollars (\$15,000.00). Defendants will not oppose such applications provided that Class
17 Counsel does not seek to recover more than the maximum amounts as stated in this Paragraph.
18 Approval of the Settlement shall not be contingent upon approval of the attorneys' fee award or the
19 costs award.

20 These fees and costs are included in, and shall come from, the Gross Settlement Fund.
21 The Class Counsel's Fees and Expenses approved by the Court shall encompass: (a) all work
22 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
23 represent the Class and/or PAGA Releasees through the date of this Agreement; (b) all work to be
24 performed and costs to be incurred in connection with approval by the Court of the Settlement and the
25 termination of this Action; (c) all work to be performed and costs and expenses, if any, incurred in
26 connection with administering the Settlement through the termination of the Action, with prejudice;
27 and (d) may be based inter alia on the Common Fund Doctrine and/or the Catalyst Theory.

28 Class Counsel must provide Settlement Administrator with IRS Forms W-9, so that the

1 Settlement Administrator may issue IRS Forms 1099 misc. To the extent attorneys' fees are not
 2 approved in the full amount requested, as set forth above, then the amount not approved will be a part
 3 of the Net Settlement Fund for distribution to the Plaintiff Class Members on a *pro rata* basis pursuant
 4 to Paragraph 3.1(f). Similarly, to the extent costs sought by Class Counsel are not approved in their
 5 entirety, any sum not approved will be a part of the Net Settlement Fund for distribution to the Plaintiff
 6 Class Members on a *pro rata* basis. Except as provided in this Paragraph, upon final approval, each
 7 Party shall bear her or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense,
 8 and settlement of the Action.

9 (b) Service Award. At the Final Approval Hearing, Class Counsel will apply to the
 10 Court for a Service Award in an amount not to exceed Five Thousand Dollars (\$5,000.00) to be paid
 11 to the Plaintiff for her services and for assuming the risks associated with this litigation. Defendants
 12 will not oppose such application. Approval of the Settlement shall not be contingent upon approval of
 13 the Service Award.

14 Any Service Award is included in, and shall come from, the Gross Settlement Fund. If the
 15 Court approves and awards an Service Award in an amount less than the Five Thousand Dollars
 16 (\$5,000.00), as set forth above, the amount not approved will be a part of the Net Settlement Fund for
 17 distribution to the Plaintiff Class Members on a *pro rata* basis pursuant to Paragraph 3.1(f). The Service
 18 Award payable to the Plaintiff shall be in addition to any payment she may receive pursuant to
 19 Paragraph 3.1(f), below.

20 (c) PAGA Payment. Subject to Court approval, an amount of One Hundred Thirty
 21 Thousand Dollars (\$130,000) shall be allocated as the PAGA Payment. Ninety-Seven Thousand Five
 22 Hundred Dollars (\$97,500.00), which is seventy-five percent (75%) of the PAGA Payment, shall be
 23 paid to the LWDA. The remaining Thirty-Two Thousand Five Hundred Dollars (\$32,500.00), which
 24 is twenty-five percent (25%) of the PAGA Payment, shall be distributed to the PAGA Releasees, based
 25 on the number of PAGA Pay Periods worked by a PAGA Releasee, as a fraction of the total PAGA
 26 Pay Periods worked by all PAGA Releasees. The portion of the PAGA Payment to the PAGA
 27 Releasees shall be treated entirely as penalties. PAGA Releasees will not have the opportunity to opt
 28 out or object to the PAGA Payment and/or release of PAGA Claims set forth in this Agreement

1 although the PAGA Settlement will be subject to Court approval. In the event the LWDA rejects this
 2 allocation, the Parties will meet and confer with the Court and the LWDA to reach a penalty allocation
 3 acceptable to all parties that does not materially alter the terms of Settlement, nor require Defendants
 4 to pay more than the Gross Settlement Fund. At the same time that Plaintiff files her Motion for
 5 Preliminary Approval, Plaintiff shall send a copy of the Agreement to the LWDA pursuant to the 2016
 6 amendments to PAGA. The PAGA Payment shall be paid from the Gross Settlement Fund.

7 (d) Administrative Expenses. Subject to Court approval, an amount of Twenty-
 8 Two Thousand Five Hundred Dollars (\$22,500) will be set aside from the Gross Settlement Fund to
 9 cover any of the Settlement Administrator's Administrative Expenses. The Parties agree to propose
 10 Simpluris, Inc. as the Settlement Administrator. If any portion of the Twenty-Two Thousand Five
 11 Hundred Dollars (\$22,500) remains unused, it will go to the Net Settlement Fund.

12 (e) Employer's Taxes. The Settlement Administrator shall calculate the
 13 Employer's Taxes and inform Defendants of the amount of Employer's Taxes to be paid by
 14 Defendants separate and apart from the Gross Settlement Fund.

15 (f) Net Settlement Fund. After deducting the amounts specified in Paragraphs
 16 3.1(a)-(d), above, each Plaintiff Class Member shall be entitled to a pro rata portion of the remaining
 17 amount of the Gross Settlement Fund, which is known as the Net Settlement Fund. Individual
 18 Settlement Payments shall be awarded to each Plaintiff Class Member from the Net Settlement Fund
 19 based on the number of Class Pay Periods worked by the Plaintiff Class Member, as a fraction of the
 20 total Class Pay Periods worked by all Plaintiff Class Members.

21 The Parties acknowledge and agree that the formula used to calculate Individual
 22 Settlement Payments does not imply that all of the elements of damages alleged in the Action are not
 23 being taken into account. The above formula was devised as a practical and logistical tool to simplify
 24 the settlement process.

25 The Parties agree that the entire amount of the Net Settlement Fund, less applicable
 26 Employee's Taxes and Required Withholdings, shall be distributed to Plaintiff Class Members. Any
 27 Class Member who is not a Plaintiff Class Member shall not receive an Individual Settlement Payment
 28 but if he/she is a PAGA Releasee, such individual will still receive his/her PAGA Payment Check.

1 3.2 Taxation of Settlement Proceeds. All Individual Settlement Payments paid to Plaintiff
 2 Class Members and any Service Award to Plaintiff shall be paid in a net amount after applicable state
 3 and federal withholdings, including payroll taxes, have been deducted.

4 (a) The Parties agree that twenty percent (20%) of the Individual Settlement
 5 Payment distributed to each Plaintiff Class Member will be considered wages, and will be, if required,
 6 reported as such to each Plaintiff Class Member on an IRS Form W-2. The Parties agree that the
 7 remaining eighty percent (80%) of the Individual Settlement Payment distributed to each Plaintiff
 8 Class Member will be considered civil penalties and interest, and will be, if required, reported as such
 9 to each Plaintiff Class Member on an IRS Form 1099 misc., if applicable. The foregoing tax allocation
 10 shall apply to sums paid to Plaintiff described in Paragraph 3.1(b). The Parties further agree that the
 11 PAGA Payment Checks distributed to each PAGA Releasee will be treated entirely as civil penalties,
 12 and will be reported as such to each PAGA Releasee on an IRS Form 1099 misc., if applicable.

13 (b) The Settlement Administrator shall calculate, withhold from each Individual
 14 Settlement Payment and the Service Award, and remit to applicable governmental agencies sufficient
 15 amounts as may be owed by the Plaintiff Class Members and Plaintiff for applicable employee taxes.
 16 The Settlement Administrator will issue appropriate tax forms to each Plaintiff Class Member and
 17 PAGA Releasee consistent with the foregoing breakdown.

18 (c) The Parties agree that the Gross Settlement Fund will qualify as a settlement
 19 fund pursuant to the requirements of section 468(B)(g) of the Internal Revenue Code of 1986, as
 20 amended, and section 1.468B-1. *et seq.* of the income tax regulations. Furthermore, the Settlement
 21 Administrator is hereby designated as the “Administrator” of the qualified settlement funds for
 22 purposes of section 1.46B-2(k) of the income tax regulations. As such, all taxes imposed on the gross
 23 income of the Gross Settlement Fund and any tax-related expenses arising from any income tax return
 24 or other reporting document that may be required by the Internal Revenue Service or any state or local
 25 taxing body will be paid from the Gross Settlement Fund.

26 (d) All Parties represent that they have not received, and shall not rely on, advice
 27 or representations from the other Party or her/its agents regarding the tax treatment of payments under
 28 federal, state or local law.

3.3 No Credit Towards Benefit Plans. Except as otherwise required by applicable plan documents, the Individual Settlement Payments, Service Award and PAGA Payment Checks made to Plaintiff, Plaintiff Class Members and PAGA Releasees under this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which any Plaintiff, Plaintiff Class Members and PAGA Releasees may be eligible including, but not limited to: retirement plans, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, pension plans, or any other benefit plan. It is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to which Plaintiff, Plaintiff Class Members and PAGA Releasees may be entitled under any benefit plans.

4. RELEASE PROVISIONS

4.1 Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically denies, that it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract, violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Plaintiff or any Class Member and/or PAGA Releasee. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

4.2 Dismissal of Claims. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth herein, Plaintiff and all Plaintiff Class Members shall dismiss with prejudice all Released Claims, to the greatest extent

permitted by law, and Plaintiff and all PAGA Releasees shall dismiss with prejudice the PAGA Claims to the greatest extent permitted by law.

4.3 Release of All Settled Claims. Upon the entry of the Final Approval Order and to the maximum extent permitted by law, Plaintiff and all Plaintiff Class Members (*i.e.*, all Class Members who do not properly opt-out) and all persons purporting to act on the Plaintiff Class Members' behalf or purporting to assert a claim under or through them, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from all disputes, claims and/or causes of action pleaded or which could have been pleaded arising, in whole or in part, from the facts, claims and/or allegations contained in the Complaint, the First Amended Complaint, the Second Amended Complaint, and/or the PAGA Notice during the Settlement Period, including the following:

(a) Any claims for unpaid wages (including minimum, regular and overtime wages), untimely wage payments both during and at the end of employment, non-compliant meal periods, non-compliant rest periods, non-compliant wage statements, non-compliant recordkeeping, and claims for interest, penalties (including but not limited to waiting time penalties), or premiums in connection therewith, as well as any claims under the Fair Labor Standards Act, the California Labor Code, California Industrial Welfare Commission Wage Orders and corresponding California Code of Regulations, alleged or which could have been alleged based, in whole or in part, on the facts, allegations and/or claims pleaded in the Complaint, the First Amended Complaint or the Second Amended Complaint in this Action or the PAGA Notice;

(b) Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged based, in whole or in part, on the facts, allegations and/or claims pleaded in the Complaint, the First Amended Complaint or the Second Amended Complaint in this Action or the PAGA Notice; and

(c) Any and all other claims under California common law, the California Labor Code including but not limited to the Private Attorneys General Act, the Fair Labor Standards Act, California Industrial Welfare Commission Wage Orders, corresponding California Code of Regulations, and the California Business and Professions Code alleged in or that could have been

1 alleged under the allegations and/or claims pleaded in Complaint, the First Amended Complaint or the
2 Second Amended Complaint in this Action or the PAGA Notice.

3 (d) The claims set forth in Paragraph 4.3 shall be collectively referred to as the
4 “**Released Claims**” or “**Settled Claims.**” The Plaintiff Class Members are bound by the release of
5 the Settled Claims in their entirety regardless of whether they cash their Individual Settlement Payment
6 check.

7 4.4 Release of PAGA Claims. Upon the Court’s approval of the PAGA Payment and this
8 release of PAGA Claims, Plaintiff and the PAGA Releasees and all persons purporting to act on the
9 PAGA Releasees’ behalf or purporting to assert a claim under or through them, hereby do and shall
10 be deemed to have fully, finally, and forever released, settled, compromised, relinquished and
11 discharged any and all of the Released Parties of and from any and all PAGA claims premised in whole
12 or in part on any of the claims set forth in Paragraph 4.3 above during the PAGA Settlement Period
13 (collectively, the “**PAGA Claims**”). The PAGA Releasees will not have the opportunity to opt out
14 of, or object to, the PAGA Payment and release of the PAGA Claims set forth in this Paragraph. The
15 PAGA Releasees are bound by the release of the PAGA Claims regardless of whether they cash their
16 PAGA Payment Check.

17 4.5 Communication to the Class. The Parties agree for settlement purposes only that,
18 because the Class Members are so numerous, it is impossible or impracticable to have each Class
19 Member execute this Agreement. Accordingly, the Class Notice will advise all Class Members of the
20 binding nature of the release of claims and such notice shall have the same force and effect as if the
21 Agreement were executed by each Class Member.

22 4.6 Representation by Plaintiff. Plaintiff and Class Counsel represent, covenant, and
23 warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to
24 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
25 cause of action, or rights herein released and discharged, except as set forth herein.

26 4.7 General Release and Waiver of California Civil Code § 1542 by Plaintiff. Upon the
27 Court’s final approval of the Class Settlement and entry of the Judgment, Plaintiff and all persons
28 purporting to act on Plaintiff’s behalf or purporting to assert a claim under or through Plaintiff, hereby

do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties from any and all claims, known or unknown, asserted and unasserted, that she has or may have had against any or all Defendants or any of the Released Parties from the beginning of time through the date Plaintiff this Agreement. Such claims include, but are not limited to the Released Claims; the PAGA Claims; breaches of contract, whether written, oral or implied; violations of any public policy; tort claims, including but not limited to intentional infliction of emotional distress and negligent infliction of emotional distress, defamation, misrepresentation, and fraud; retaliation claims; common law claims; any other claims for damages, costs, fees, or other expenses, including attorneys' fees; and any violations of the following statutes, laws, and regulations and amendments thereto: Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United States Code; the Americans with Disabilities Act of 1990; the Employment Retirement Income Security Act of 1974; the Occupational Safety and Health Act; the Sarbanes-Oxley Act of 2002; the Family and Medical Leave Act of 1993; the Fair Labor Standards Act; the California Fair Employment and Housing Act – California Government Code § 12900 *et seq.*; the California Family Rights Act – California Government Code § 12945.2 *et seq.*; the California Unruh Civil Rights Act – California Civil Code § 51 *et seq.*; the California Whistleblower Protection Law – California Labor Code § 1102.5; the California Occupational Safety and Health Act – California Labor Code § 6300 *et seq.*; the California Private Attorneys General Act – California Labor Code § 2698 *et seq.*; the California Business and Professions, Civil, Government and Labor Code; and any other federal, state, or local civil employment law, statute, regulation, or ordinance capable of being released by Plaintiff, excluding any claims that cannot be released as a matter of law. Plaintiff shall be deemed to have, and by operation of the Final Approval Order shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Plaintiff, for herself, has read Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not

1 know or suspect to exist in his or her favor at the time of executing the release and that,
 2 if known by him or her, would have materially affected his or her settlement with the
 debtor or released party.

3
 4 Plaintiff understands that Section 1542 gives the right not to release existing claims of which
 5 she is not now aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised,
 6 Plaintiff nevertheless voluntarily waives the rights described in Section 1542, and elects to assume all
 7 risks for claims that now exist in her favor, known or unknown. The release of the claims of Plaintiff
 as set forth in this Paragraph 4.7 is a condition precedent to enforcement of this Agreement.

8
 9 4.8 No Pending or Future Lawsuits by Plaintiff. Other than this Action, Plaintiff represents
 10 that she does not have any pending lawsuits, administrative complaints or charges against Defendants
 11 or the Released Parties in any local, state or federal court or administrative agency. Plaintiff further
 12 acknowledges that all claims raised therein, if any, shall be fully and finally extinguished by virtue of
 13 this Settlement Agreement and the Court's Final Approval Order. Plaintiff further represents that she
 14 will not bring any action in the future in which she seeks to recover any damages from Defendants or
 15 the Released Parties relating to or arising from Plaintiff's employment, other than an action to enforce
 her rights under this Settlement Agreement.

16
 17 4.9 Release of Claims by Class Counsel. Upon receipt of Class Counsel's Fees and
 18 Expenses, as ordered by the Court on final approval of the Settlement, Class Counsel shall fully and
 19 finally release Defendants and the Released Parties from any and all claims for attorneys' fees and
 20 expenses arising from the Action and any claims released by the Plaintiff, Class Members and PAGA
 21 Releasees, whether known and unknown, whether under federal, state and/or local law, statute,
 22 ordinance, regulation, common law, or other source of law. Class Counsel's Released Claims and
 23 PAGA Claims include, but are not limited to, claims for attorneys' fees and expenses arising from or
 24 dependent on the California Civil Code, the California Code of Civil Procedure, the California Labor
 25 Code; the wage orders of the California Industrial Welfare Commission; corresponding California
 26 Code of Regulations; California Business and Professions Code sections 17200, *et seq.*; California
 27 Labor Code sections 2698, *et seq.*; the California common law of contract and tort, and the Fair Labor
 28 Standards Act.

4.10 Labor Code Sections Do Not Apply To Releases. The Parties agree that California Labor Code section 206.5 and 2804 do not invalidate any provision of this Agreement, because among other things, the claims and Released Claims and PAGA Claims are disputed and contested, and the Settlement was bargained for at arms' length and approved by the Court.

5. CONDITIONAL CLASS CERTIFICATION AND CLASS COUNSEL

5.1 Class Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the following class as defined in Paragraph 2.6: all persons who are or were employed by one or more Defendants as non-exempt Skilled Clinicians (as defined in Paragraph 2.52) to work at a skilled nursing facility in California at any time from February 14, 2015 through September 1, 2020.

(a) For settlement purposes only, the Parties agree that the Class as defined in Paragraph 2.6 herein and which will run through September 1, 2020, may be certified in the Action pursuant to Federal Rule of Civil Procedure 23. The Parties are not certifying any PAGA claims. In support of this Agreement, Plaintiff will request that the Court certify for settlement purposes the Class as to all non-PAGA claims that have been asserted, which Defendants shall not oppose or object to.

5.2 The Parties intend the Class Settlement to be contingent upon the preliminary and final approval of each and every term of this Agreement, without material or substantive modification, unless the Parties agree to such modification. Except as expressly set forth in this Agreement, if the Court does not so approve this Agreement, the Parties intend this Agreement to become null and void, and unenforceable, in which event the settlement terms set forth herein, including any modifications made with the consent of the Parties, and any action taken or to be taken in connection with this Agreement shall be terminated and shall become null and void and have no further force or effect, and the Class certified pursuant to this Agreement will be decertified for all purposes.

5.3 In the event that the Court does not grant approval of the PAGA Settlement, preliminary or final approval of the Class Settlement, or in the event that this Agreement shall terminate or the Settlement embodied herein does not become effective for any reason, the Agreement and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of Plaintiff, Class Members, PAGA Releasees and Defendants, stricken from the record, each of whom

1 shall be restored to her/their/its respective positions existing prior to the execution of this Agreement,
 2 and evidence relating to the Agreement and all negotiations shall not be discoverable or admissible in
 3 the Action or any other litigation. Defendants do not waive, and instead expressly reserve, their rights
 4 to challenge the propriety of class certification for any purpose should the Court not grant preliminary
 5 or final approval of the Parties' Settlement.

6 5.4 If the Court grants approval of the PAGA Settlement and preliminary approval of the
 7 Class Settlement but does not grant final approval of the Class Settlement, then the Preliminary
 8 Approval Order shall be vacated in its entirety. In addition, this Agreement, the Preliminary Approval
 9 Order, and any other document in any way relating to the Agreement or Settlement shall be stricken
 10 from the record and may not be relied upon, referred to or used in any way for any purpose in
 11 connection with any further proceedings in this or any related action, including class certification
 12 proceedings. Defendants do not waive, and instead expressly reserve, their rights to challenge the
 13 propriety of class certification for any purpose should the Court not grant final approval of the Class
 14 Settlement.

15 5.5 Appointment of Class Representative. Solely for the purposes of this Settlement, the
 16 Parties stipulate and agree that Plaintiff Sarah Stonehocker shall be appointed as a representative for
 17 the Class.

18 5.6 Appointment of Class Counsel. Solely for the purposes of this Settlement, the Parties
 19 stipulate and agree that Matthew D. Carlson of the Law Office of Matthew D. Carlson shall be
 20 appointed as Class Counsel for the Class.

21 6. **NOTICE AND SETTLEMENT ADMINISTRATION PROCESS**

22 6.1 Identification of Class Members and PAGA Releasees. Within thirty (30) days after
 23 entry of the Preliminary Approval Order and Order Approving PAGA Settlement, Defendants shall
 24 provide to the Settlement Administrator a list of PAGA Releasees and Class Members that includes:
 25 (1) the names, last known addresses, last known personal telephone numbers (if known), and social
 26 security numbers of each Class Member/PAGA Releasee; (2) the total number of Class Pay Periods
 27 worked by each Class Member and the total number of PAGA Pay Periods worked by each PAGA
 28 Releasee; and (3) such other information that the Settlement Administrator requires to identify Class

Members and PAGA Releasees. Defendants agree to provide the list in an electronic format reasonably acceptable to the Settlement Administrator. The Settlement Administrator will keep the list confidential, use it only for the purposes described herein, and return it to Defendants upon completion of the settlement administration process. The Settlement Administrator shall not share the list with Plaintiff, Class Counsel, or any other person without Defendants' written approval.

6.2 Individual Settlement Payment Calculation. Based on the information in the Class Member/PAGA Releasee list and the formula set forth in Paragraphs 3.1(c) and 3.1(f) above, the Settlement Administrator shall promptly calculate the estimated PAGA Settlement Check for every PAGA Releasee and the estimated Individual Settlement Payment for every Class Member, to be included in the individualized Class Notice to be sent to that Class Member and/or PAGA Releasee, and shall prepare and e-mail a spreadsheet setting forth those calculations to Defense Counsel no fewer than five (5) days before mailing the Class Notice to Class Members and PAGA Releasees. The Class Notice will inform each Class Member and/or PAGA Releasee of his/her right to opt out of the non-PAGA payment and release of non-PAGA claims or to object to the non-PAGA payment and release of non-PAGA claims. It will also inform Class Members that if they first request exclusion from, and opt out of, the Class Settlement and then object, the objections would not be considered valid and that if the Class Members object and then request exclusion from, and opt out of the Class Settlement, the Class Members would be deemed to have waived their objection.

6.3 Notice Procedure. Within fifteen (15) days after receipt of the list of Class Members/PAGA Releasees described in Paragraph 6.1 above, the Settlement Administrator shall mail the Class Notices to each Class Member/PAGA Releasee whose address information is known. Prior to this mailing, the Settlement Administrator shall conduct a National Change of Address check as to each address. The mailing shall be sent by first-class U.S. Mail, postage pre-paid. The date that the Settlement Administrator mails the Class Notices is the Mailing Date. It shall be conclusively presumed that each and every Class Member/PAGA Releasee whose Class Notice are not returned to the Settlement Administrator as undeliverable within thirty (30) calendar days after the Mailing Date has received the Class Notices.

(a) The Settlement Administrator shall promptly re-mail any Class Notice returned by the Post Office with a forwarding address. It shall be conclusively presumed that those Class Members/PAGA Releasees whose re-mailed Class Notice are not returned to the Settlement Administrator as undeliverable within thirty (30) days after re-mailing has received the Class Notice.

(b) The Settlement Administrator shall conduct one additional address search/check via an appropriate skip tracing search for any Class Notice returned by the Post Office as “undeliverable.” If an updated address is found, the Settlement Administrator shall promptly re-mail the Class Notice to that address one time.

(c) Class Counsel shall provide to the Court, at or before the Final Approval Hearing, a declaration from the Settlement Administrator confirming that the Class Notices were mailed to all Class Members/PAGA Releasees as required by this Agreement, as well as any additional information Class Counsel and Defense Counsel both deem appropriate to provide to the Court.

(d) The Class Notice shall state the formula to be used in calculating Individual Settlement Payments and PAGA Payment Checks as calculated by the Settlement Administrator. A Plaintiff Class Member and/or PAGA Releasee may seek to challenge his or her estimated Individual Settlement Payment and PAGA Payment Check amount set forth in his or her Class Notice. Such challenges must: (i) be in writing; (ii) state the full name of the Class Member/PAGA Releasee seeking the challenge; (iii) include a statement that the Class Member/PAGA Releasee is seeking to challenge his or her estimated Individual Settlement Payment and/or PAGA Payment Check set forth in the Class Notice; (iv) state the number of Class Pay Periods and/or PAGA Pay Periods that the Class Member/PAGA Releasee believes he or she has worked; (v) include documentation to support the challenge; (vi) signed by the Class Member/PAGA Releasee seeking the challenge; and (vii) mailed to the Settlement Administrator with a postmark date on or before the expiration of the Notice Period. A Plaintiff Class Member and/or PAGA Releasee challenging his or her Individual Settlement Payment amount and/or PAGA Payment Check amount must produce documentary evidence to the Settlement Administrator for consideration and/or challenge. The Settlement Administrator will resolve the challenge with input from Class Counsel and Defense Counsel and make a final and binding determination without hearing or right of appeal. The personnel records, including payroll

1 records, of Defendants shall be considered by the Settlement Administrator as the presumptive best
2 evidence of the number of Class Pay Periods and PAGA Pay Periods worked.

3 (e) The Class Notice shall explain that if a Class Member does not opt out of the
4 Class Settlement, such Class Member will receive the Individual Settlement Payment pursuant to the
5 terms of this Agreement. The Parties intend that reasonable means be used to maximize the probability
6 that all Class Members shall receive the Class Notice.

7 (f) Within ten (10) days after the close of the Notice Period, the Settlement
8 Administrator will provide Defense Counsel with a report by name and last four digits of Social
9 Security Number listing the amount of all Individual Settlement Payments to be made to the Plaintiff
10 Class Members, the amount of all PAGA Payment Checks to be made to the PAGA Releasees, a list
11 by name of all Class Members who timely opted out under Paragraph 6.5, below, and a list by name
12 of all Plaintiff Class Members who timely objected under Paragraph 6.7 below. Within that same time
13 period, the Settlement Administrator will provide to Class Counsel a report stating the total number
14 of Plaintiff Class Members, the total number of Class Members who timely opted out under Paragraph
15 6.5, below and the total number of Plaintiff Class Members who timely objected under Paragraph 6.7
16 below.

17 6.4 Class Settlement Payment. Any Class Member who wishes to become a Plaintiff Class
18 Member and receive an Individual Settlement Payment must not opt out of the Class.

19 6.5 Opt-Out Procedure. Any Class Member who wishes to be excluded from the Class
20 Settlement may seek exclusion under this Paragraph. However, no PAGA Releasee can seek exclusion
21 from the PAGA portion of the settlement. Unless a Class Member timely and properly opts out of the
22 Class Settlement described in this Agreement, he/she/they shall be a Plaintiff Class Member and shall
23 be bound by all the terms and conditions of this Agreement, and shall also be bound by the Court's
24 Order enjoining all Plaintiff Class Members from pursuing, or seeking to reopen, any of the Settled
25 Claims against the Released Parties. A Class Member will not be entitled to opt out of the Class
26 Settlement established by this Agreement unless he or she submits a timely Opt-Out Request as
27 provided in this Paragraph. An Opt-Out Request must be: (i) made in writing; (ii) state the full name
28 of the Class Member seeking exclusion; (iii) include a statement that the Class Member seeking

1 exclusion from the Settlement requests exclusion from the Class and does not wish to participate in
 2 the Class Settlement; (iv) signed by the Class Member seeking exclusion from the Settlement; and (v)
 3 mailed to the Settlement Administrator with a postmark date on or before the expiration of the Notice
 4 Period.

5 The Opt-Out Request must be completed by the Class Member seeking exclusion from the
 6 Class Settlement. Any Class Member who properly submits a timely, complete and valid Opt-Out
 7 Request using this procedure will not be entitled to an Individual Settlement Payment and will not be
 8 bound by the Settlement or have any right to object, appeal or comment thereon, except that a Class
 9 Member that is also a PAGA Releasee will be bound by the release of PAGA Claims set forth in this
 10 Agreement and will be issued the PAGA Releasee's PAGA Payment Check.

11 PAGA Releasees will not have the opportunity to opt out or object to the PAGA Payment
 12 and/or release of PAGA Claims although the PAGA Settlement will be subject to Court approval.

13 (a) Upon receipt of any Opt-Out Request within the Notice Period, the Settlement
 14 Administrator shall review the request to verify the information contained therein, and to confirm that
 15 the request complies with the requirements of this Agreement.

16 (b) Any Class Member who fails to submit a timely, complete and valid Opt-Out
 17 Request shall be barred from opting out of this Agreement or the Settlement. The Settlement
 18 Administrator shall not review or consider any Opt-Out Request postmarked after the end of the Notice
 19 Period. It shall be conclusively presumed that, if an Opt-Out Request is not postmarked on or before
 20 the end of the Notice Period, or is not received by the Settlement Administrator, the Class Member
 21 did not make the request in a timely or valid manner. Under no circumstances shall the Settlement
 22 Administrator have the authority to extend the deadline for Class Members to submit an Opt-Out
 23 Request.

24 (c) The Settlement Administrator shall give Class Counsel and Defense Counsel a
 25 weekly update on the number of Opt-Out Requests it receives that week.

26 6.6 Excessive Opt-Out Requests. If twenty (20) or more Class Members timely opt out of
 27 the Class Settlement, Defendants shall have the sole and absolute discretion to rescind/void the
 28 Settlement within twenty (20) days after receiving from the Settlement Administrator the final list of

1 opt-outs. In the event that Defendants elect to rescind/void the Settlement Agreement, Defendants
 2 shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same
 3 effect as a termination of the Settlement Agreement for failure to satisfy a condition of settlement, and
 4 the Settlement Agreement shall become null and void and have no further force or effect, and the
 5 Settlement Class certified pursuant to the Settlement Agreement will be decertified for all purposes.
 6 If Defendants choose to terminate the Settlement Agreement under this provision, it shall be
 7 responsible to pay the Settlement Administrator's fees and costs incurred to that point.

8 6.7 Objections to Class Settlement. Any Plaintiff Class Member may object to the Class
 9 Settlement. Plaintiff Class Members who wish to object must send their written objections to the Court
 10 only by the close of the Notice Period. All objections will be scanned into the electronic case docket
 11 and the Parties will receive electronic notices of filing. An objection must state the specific grounds
 12 on which it is being made and all supporting facts. The Class Notice will state in substance:

13 Any member of the Class who has not opted out can ask the Court to
 14 deny approval of the settlement by filing an objection. You can't ask the
 15 Court to order a larger settlement; the Court can only approve or deny
 16 the settlement. If the Court denies approval, no settlement payments will
 be sent out and the lawsuit will continue. If that is what you want to
 happen, you must object.

17 You may object to the proposed settlement in writing, except you may
 18 not object to the PAGA Payment and release of PAGA Claims. You
 19 may also appear at the Final Approval Hearing, either in person or
 20 through your attorney. If you appear through your own attorney, you are
 21 responsible for paying that attorney. All written objections and
 22 supporting papers must (a) clearly identify the case and number
 23 (*Stonehocker v. Kindred Healthcare Operating, LLC*, Case No. 4:19-
 24 cv-02494-YGR), (b) be submitted to the Court either by mailing them
 to the Class Action Clerk, United States District Court for the Northern
 District of California, 1301 Clay Street, Suite 400 S, Oakland, CA
 94612, or by filing them in person at any location of the United States
 District Court for the Northern District of California, and (c) be filed or
 postmarked on or before [insert date of the close of the Notice Period].
 Class Members who fail to timely mail or file such a written statement
 of objection shall be foreclosed from making any objection to this
 Settlement.

25 Class Members who fail to timely file and serve such a written statement of objection shall be
 26 foreclosed from making any objection to this Settlement. Only Plaintiff Class Members may object to
 27 the Class Settlement. If an objector intends to appear at the Final Approval Hearing, either in person
 28 or through an attorney of his/her choice, he or she must also serve and file with his or her objection, a

1 Notice of Intention to Appear. This Paragraph shall be strictly applied and enforced. Failure to comply
2 with its terms shall render an objection ineffective and waived.

3 6.8 Funding and Distribution of Settlement. Within twenty (20) calendar days after the
4 Effective Date, Defendants shall transfer to the Settlement Administrator an amount equal to the Gross
5 Settlement Fund plus its share of the Employer's Taxes. The delivery of the Gross Settlement Fund to
6 the Settlement Administrator plus Defendants' share of Employer's Taxes shall constitute full and
7 complete discharge of the entire obligation of Defendants under this Agreement. Once Defendants
8 have made such payments, they will be deemed to have satisfied all terms and conditions under this
9 Agreement, shall be entitled to all protections afforded to Defendants under this Agreement, and shall
10 have no further obligations under the terms of the Agreement regardless of what occurs with respect
11 to those sums. Additionally, no Released Party shall have any further obligation or liability to the
12 Plaintiff, PAGA Releases, or Class Members under this Agreement.

13 (a) The distribution of the PAGA Payments to the LWDA and PAGA Releasees
14 and Individual Settlement Payments to Plaintiff Class Members shall occur on the Settlement Proceeds
15 Distribution Deadline. The Settlement Administrator shall be deemed to have timely distributed all
16 such payments if it places in the mail Individual Settlement Payments for all Plaintiff Class Members
17 and the PAGA Payments to the PAGA Releasees and the LWDA by the Settlement Proceeds
18 Distribution Deadline. No person shall have any claim against the Settlement Administrator,
19 Defendants, Class Counsel, Defense Counsel, or any other agent designated by Plaintiff or Defendants
20 based upon the distribution of Individual Settlement Payments and the PAGA Payments made
21 substantially in accordance with this Agreement or further orders of the Court.

22 (b) The Individual Settlement Payments shall be paid to each Plaintiff Class
23 Member by way of a single check. Each Individual Settlement Payment check will contain language
24 in substantially the following form: "I understand that by cashing, depositing, or otherwise negotiating
25 this check I will be deemed to have opted into *Sarah Stonehocker, on behalf of herself and all others*
26 *similarly situated, vs. Kindred Healthcare Operating, LLC et al.*, Case No. 4:19-cv-02494-YGR for
27 purposes of the federal Fair Labor Standards Act (FLSA) release to the extent required to do so under
28 applicable law for purposes of the court-approved settlement therein."

(c) PAGA Payment Check shall be paid to each PAGA Releasee by way of a single check. The PAGA Payment Check represents the portion of the civil penalties awarded directly under PAGA.

(d) Any settlement checks that are not claimed or not negotiated within ninety (90) days after distribution by the Settlement Administrator shall be void. The Settlement Administrator shall send one reminder postcard to any settlement check recipients who did not claim or not negotiate their settlement checks within forty-five (45) days after distribution by the Settlement Administrator to claim and/or negotiate their settlement checks. Any funds not distributed after the expiration of the settlement checks shall be paid to the Court-approved *cy pres* beneficiary of the Settlement. The Parties agree to propose the First Responders Children's Foundation COVID-19 Emergency Response Fund as the *cy pres* beneficiary.

(e) Except as otherwise stated in this Agreement, the Settlement Administrator's distribution of Class Counsel's Fees and Expenses and the Service Award from the Gross Settlement Fund shall occur on the Settlement Proceeds Distribution Deadline. Upon such payment, Defendants, the Released Parties, Defense Counsel, and the Settlement Administrator shall have no further liability or responsibility to Plaintiff, Class Counsel or to any vendors or third parties employed by the Plaintiff or Class Counsel.

(f) Defendants shall not be obligated to make any payments contemplated by this Agreement until the conditions set forth in this Agreement occur.

6.9 CAFA Notice. The Court's subject matter jurisdiction over the Action is based on CAFA. Pursuant to the requirements of the CAFA, within ten (10) days after this Settlement is filed in Court, Defendants will prepare a notice of the Settlement pursuant to CAFA and the Settlement Administrator will serve such notice to the United States Attorney General and appropriate state officials. The notice shall comply with the requirements of the CAFA.

7. COURT APPROVAL AND EFFECTIVE DATES

7.1 Binding Effect of Agreement on Class Members. Upon final Court approval of the Class Settlement, all Plaintiff Class Members shall be bound by this Agreement, and the Action and the Settled Claims shall be dismissed with prejudice and released as against the Released Parties to

the greatest extent permitted by law. In addition, unless a Class Member effectively opts out of the Settlement, he or she shall be bound by the Court's Order enjoining all Plaintiff Class Members from pursuing or seeking to reopen Settled Claims against the Released Parties to the greatest extent permitted by law. Upon Court approval of the PAGA Payment and the release of the PAGA Claims, all PAGA Releasees shall be bound by the release of the PAGA Claims and the PAGA Claims shall be dismissed with prejudice and released as against all the Released Parties to the greatest extent permitted by law.

7.2 Amendment of the Complaint. Upon execution of this Agreement, Plaintiff shall promptly move to amend the First Amended Complaint to add Kindred Rehab Services, LLC, Kindred Rehab Services, Inc., RehabCare Group East, LLC, RehabCare Group East, Inc., American VitalCare LLC, and RehabCare Group of California, LLC as named defendants and add the following causes of action: (1) failure to provide compliant meal breaks; (2) failure to authorize and permit compliant rest breaks; (3) failure to furnish accurate wage statements; (4) failure to keep accurate employment records; (5) failure to pay wages when due; and (6) PAGA civil penalties. A copy of the proposed Second Amended Complaint to be filed by Plaintiff is attached hereto as **Exhibit B**.

7.3 Preliminary Approval and Order Approving PAGA Settlement. Upon execution of this Agreement, Plaintiff shall file a motion in the Action requesting that the Court enter a Preliminary Approval Order and Order Approving PAGA Settlement as follows:

(a) Approving the PAGA Settlement, including the PAGA Payment, distribution plan of the PAGA Payment, and the release of the PAGA Claims set forth in this Agreement and preliminarily approving for settlement purposes only the remaining portions of the proposed Settlement;

(b) Dismissing the PAGA Claims asserted in the Action with prejudice as to the Plaintiff and all PAGA Releasees and permanently enjoining all PAGA Releasees from pursuing or seeking to reopen the PAGA Claims against the Released Parties;

(c) Preliminarily approving the appointment of the Plaintiff as representative of the Class for settlement purposes only;

(d) Preliminarily approving the appointment of Class Counsel as counsel for the Class for settlement purposes only;

(e) Appointing and approving the Settlement Administrator as chosen by the Parties and approved by the Court, to administer the claims and settlement payment procedures required by this Agreement;

(f) Approving the form of the Class Notice, and requiring that individualized Class Notice be sent to Class Members and PAGA Releasees;

(g) Approving the plan for the provision of notice to Class Members and PAGA Releasees, as stated herein and in the Class Notices;

(h) Scheduling the Final Approval Hearing for consideration of class certification for settlement purposes and final approval of this Agreement;

(i) Approving the procedure for Class Members and PAGA Releasees to challenge the estimated Individual Settlement Payment and PAGA Payment Check amount set forth in the Class Notice and the date after which no Class Member and PAGA Releasee shall be allowed to submit a challenge;

(j) Approving the procedure for Class Members to opt out of the Class Settlement and the date after which no Class Member shall be allowed to submit a request to opt out; and

(k) Approving the procedure for Plaintiff Class Members to object to the Class Settlement and the date after which no Class Member shall be allowed to object.

Plaintiff agrees to provide her motion for Preliminary Approval Order and Order Approving PAGA Settlement and the proposed order to her motion to Defendants for review as soon as is practicable.

7.4 Non-Interference. The Parties and their counsel agree that they shall not seek to solicit or otherwise encourage Class Members to submit an Opt-Out Request or an objection to the Settlement or to appeal from the Preliminary Approval Order and Order Approving PAGA Settlement, Final Approval Order or Judgment.

7.5 Final Approval Order and Judgment. Plaintiff (or Plaintiff jointly with Defendants) will request that the Court enter, after the Final Approval Hearing finally approving the Class

1 Settlement, a Final Approval Order and Judgment. Plaintiff (or Plaintiff jointly with Defendants) will
 2 request that the Final Approval Order certify the Class for settlement purposes; find that this
 3 Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the Class;
 4 permanently enjoin all Plaintiff Class Members from pursuing or seeking to reopen Settled Claims
 5 against the Released Parties; and require the Parties to carry out the provisions of this Agreement.
 6 Plaintiff agrees to provide her motion for final approval of the class settlement and the proposed order
 7 to her motion to Defendants for review no later than seven (7) days before the filing date.

8 7.6 Entry of Final Judgment. Plaintiff (or Plaintiff jointly with Defendants) will request
 9 that the Court enter, after the Final Approval Hearing, a Final Approval Order and Judgment as agreed
 10 to by the Parties.

11 7.7 Effective Date of Agreement. The “Effective Date” of this Agreement shall be the
 12 latter of the last date by which all appeals of the Judgment could be filed or when actual appeals are
 13 exhausted such that the Judgment becomes final. The Effective Date is conditioned upon all of the
 14 following occurring:

- 15 (a) This Agreement has been signed by the Parties and Class Counsel;
- 16 (b) The Court has entered a Preliminary Approval Order and Order Approving
 17 PAGA Settlement consistent with this Agreement;
- 18 (c) The Court has entered an Order granting Plaintiff leave to file a Second
 19 Amended Complaint substantially similar to the Second Amended Complaint attached hereto as
 20 **Exhibit B** and the Second Amended Complaint is filed;
- 21 (d) The Class Notice has been mailed to the Class Members and PAGA Releasees
 22 as ordered by the Court in this Action;
- 23 (e) The Court has entered a Final Approval Order consistent with this Agreement;
- 24 (f) The Court has entered a Judgment dismissing the Action consistent with this
 25 Agreement; and
- 26 (g) Settlement Administrator has provided Defense Counsel with written wire/bank
 27 transfer instructions, including the Settlement Administrator’s address, the bank name, bank address,
 28 account number, account name, ABA number, and SWIFT Code.

7.8 Automatic Voiding of Agreement if Settlement Not Finalized. If for any reason the Settlement set forth in this Agreement does not become final, the Settlement shall be null and void and all orders, judgment, and dismissal entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the status quo prior to entering this Agreement with respect to the Action, as if the Parties had never entered into this Agreement, and the settlement class certified pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the Agreement (including all exhibits, drafts and related documents, papers, and communications) and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto, and evidence relating to the Agreement (including all exhibits, drafts and related documents, papers, and communications) and all negotiations shall not be admissible or discoverable in the Action or otherwise.

7.9 Confidentiality and Non-Disparagement and Returning Documents. The Parties agree that the terms of the Agreement shall be confidential until the filing of Plaintiff's Motion for Preliminary Approval Order and Order Approving PAGA Settlement. This confidentiality agreement shall not prevent any counsel from conferring with and advising clients who have retained them, provided that the clients agree to abide by this temporary confidentiality agreement.

(a) Plaintiff agrees that she shall not promote, or publicize the filing of this Action, the Parties' Settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone other than the Court. Notwithstanding the foregoing, Plaintiff may disclose the terms of this Agreement to her spouse, Class Members, to those persons to whom disclosure is necessary for the preparation of tax returns and other financial reports, and to persons to whom disclosure is ordered by a court of competent jurisdiction or otherwise required by law. Plaintiff agrees that she may disclose the terms of the Settlement to her spouse, but only so long as she first obtains her spouse's express agreement to maintain that information in confidence.

(b) Plaintiff and Class Counsel agree that they will not issue any press releases, engage in any communications, or take any other action that would directly or indirectly provide the press or media or any litigation reporting service with information about this Action, this Agreement, or the Parties' Settlement or would otherwise enable or allow the press or other media or any litigation

1 reporting service to learn or obtain such information. Plaintiff and Class Counsel agree not to post any
 2 information concerning this Settlement on the internet or social media, including Facebook, Twitter,
 3 Instagram, LinkedIn, Snapchat. Plaintiff and Class Counsel further agree that they will not post any
 4 information regarding this Agreement or the Settlement on their internet websites or take any such
 5 action that would cause or allow such information to be posted on any other internet website or on the
 6 web.

7 7.10 Invalidation of Agreement for Failure to Satisfy Conditions. The terms and provisions
 8 of this Agreement are not recitals, but are deemed to constitute contractual terms. In the event that any
 9 of the material terms or conditions set forth in this Agreement are not fully and completely satisfied,
 10 this Agreement shall terminate and all terms of the Agreement including, but not limited to, the
 11 conditional certification of the Class, the payment of Individual Settlement Amounts to Plaintiff Class
 12 Members, the payment of attorneys' fees and costs to Class Counsel, the Service Award to Plaintiff,
 13 and the payment of the PAGA Payment shall be null and void. In such event, nothing in this Agreement
 14 shall be used, construed or admissible as evidence by or against any Party or Released Party as a
 15 determination, admission, or concession of any issue of law or fact in this Action, or in any other
 16 proceeding for any purpose; and the Parties do not waive, and instead expressly reserve, their
 17 respective rights to prosecute and defend this Action as if this Agreement never existed. In addition,
 18 notwithstanding the generality of the foregoing, if this Agreement is terminated for failure to satisfy
 19 any of the terms or conditions of this Agreement, Defendants shall not be obligated to create or
 20 maintain any type of settlement fund, and shall not be obligated to pay any amount in the Gross
 21 Settlement Fund to any Class Member and/or PAGA Releasee, to Class Counsel, to the Settlement
 22 Administrator, to the State of California or to Plaintiff.

23 **8. GENERAL PROVISIONS**

24 8.1 Notices. All notices, requests, demands and other communications required or
 25 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered personally
 26 or by first class mail to the Settlement Administrator appointed by the Court and to counsel at their
 27 respective addresses as set forth below:

28 //

CLASS COUNSEL

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8.2 Nullification of Settlement Agreement. In the event: (1) the Court does not enter the Preliminary Approval Order and Order Approving the PAGA Settlement as provided herein; (2) the Court does not enter a Final Approval Order as provided herein; (3) the Settlement does not become final for any other reason; or (4) Judgment is not entered by the Court dismissing the Action, including all Settled Claims as to all Plaintiff Class Members with prejudice and PAGA Claims as to all PAGA Releasees with prejudice, this Settlement Agreement shall be null and void and any order entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such case, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Settlement Agreement and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

8.3 Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in the attached Exhibits A, B and C, which are incorporated by this reference as though fully set

1 forth herein. The descriptive headings of any paragraphs or sections of this Settlement Agreement are
 2 inserted for convenience only and do not constitute a part of this Settlement Agreement.

3 8.4 Interim Stay of Proceedings/Reservation of Jurisdiction. The Parties agree to stay all
 4 proceedings in the Action, except such proceedings necessary to implement and complete the
 5 Settlement, pending the Final Approval Hearing to be conducted by the Court.

6 8.5 Amendment or Modification. This Settlement Agreement may be amended or modified
 7 only by a written instrument signed by Defense and Class Counsel or their successors-in-interest.

8 8.6 Entire Agreement. This Agreement constitutes the full, complete and entire
 9 understanding, agreement and arrangement between the Plaintiff, the Class Members and the PAGA
 10 Releasees on the one hand, and Defendants on the other hand, with respect to the Settlement of the
 11 Action, the Settled Claims and the PAGA Claims against the Released Parties. This Agreement
 12 supersedes any and all prior oral or written understandings, agreements and arrangements between the
 13 Parties with respect to the Settlement of the Action, the Settled Claims and the PAGA Claims against
 14 the Released Persons, including the Memorandum of Understanding reached on May 20, 2020 and
 15 executed by the Parties thereafter. Except for those set forth expressly in this Agreement, there are no
 16 other agreements, covenants, promises, representations or arrangements between the Parties with
 17 respect to the Settlement of the Action, the Settled Claims and the PAGA Claims against the Released
 18 Parties. The Parties explicitly recognize California Civil Code section 1625 and California Code of
 19 Civil Procedure section 1856(a), which provide that a written agreement is to be construed according
 20 to its terms, and may not be varied or contradicted by extrinsic evidence, and agree that no such
 21 extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this
 22 Agreement. The Settlement and this Agreement shall have no impact on the validity or enforceability
 23 of the Dispute Resolution Agreements entered by the Class Members, and the settlement shall not
 24 prejudice Defendants or the Released Parties from seeking to enforce such Dispute Resolution
 25 Agreements.

26 8.7 Authorization to Enter Into Settlement Agreement. The person or persons signing this
 27 Settlement Agreement on behalf of Defendants represent and warrant that he/she/they are authorized
 28 to sign this Settlement Agreement on behalf of Defendants. Plaintiff represents and warrants that she

1 is authorized to sign this Settlement Agreement and that she has not assigned any Claim covered by
 2 this Settlement to a third-party. Plaintiff, by signing this Settlement Agreement, is bound by the terms
 3 herein and further agrees not to submit any Request for Exclusion from or Notice of Objection to the
 4 Settlement. Any such Request for Exclusion or Notice of Objection shall therefore be void and of no
 5 force or effect.

6 8.8 Signature of all Class Members Unnecessary to be Binding. The Parties agree that
 7 because the Class Members are numerous, it is impossible or impractical to have each Class Member
 8 execute this Agreement. The Notice will advise all Class Members of the binding nature of the release
 9 provided herein and shall have the same force and effect as if the Agreement were executed by each
 10 Class Member. The only Class Members who will not be bound by the terms of this Agreement are
 11 those who submit a timely and valid Request for Exclusion.

12 8.9 Binding on Successors and Assigns. This Settlement Agreement shall be binding upon,
 13 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

14 8.10 Captions. The captions and section and paragraph numbers in this Agreement are
 15 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or
 16 intent of the provisions of this Agreement.

17 8.11 California Law Governs. All terms of this Settlement Agreement shall be governed by
 18 and interpreted according to the laws of the State of California.

19 8.12 Publicity. Plaintiff and Class Counsel agree that they will not issue any press releases,
 20 initiate any contact with the press, respond to any inquiry from the press about this case, or otherwise
 21 publicize this Action, the facts of this Action, or the outcome of the mediation or Settlement. With
 22 the exception of a general description of the case and total settlement amount, with no party identifying
 23 information, Plaintiff and Class Counsel also agree not to publish the terms of the settlement or any
 24 related information on their website(s), for advertising purposes and/or in publication materials
 25 generally available to the public. This provision shall not prevent Class Counsel from referring to this
 26 Settlement in court-filed "adequacy of counsel" showings in other class and representative actions.

27 8.13 Mutual Cooperation. The Parties agree to fully cooperate with each other to accomplish
 28 the terms of this Agreement, including but not limited to, execution of such documents and to take

1 such other action as may be necessary to implement the terms of this Agreement. The Parties to this
 2 Agreement shall use their best efforts, including all reasonable efforts contemplated by this Agreement
 3 and any other reasonable efforts that may become necessary by order of the Court, or otherwise, to
 4 effectuate this Agreement and the terms set forth herein.

5 8.14 Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
 6 conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly against
 7 one party than another merely by virtue of the fact that it may have been prepared by counsel for one
 8 of the Parties, it being recognized that, because of the arms-length negotiations between the Parties,
 9 all Parties have contributed to the preparation of this Agreement.

10 8.15 Severability. The Parties to this Agreement agree, covenant, and represent that each
 11 and every provision of this Agreement shall be deemed to be contractual, and that they shall not be
 12 treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant,
 13 and represent that each and every provision of this Agreement shall be considered severable, except
 14 for the release provisions of Paragraphs 4.3 and 4.4 of this Agreement. If a court of competent
 15 jurisdiction finds the release provisions of Paragraphs 4.3 or 4.4 of this Agreement to be unenforceable
 16 or invalid as against a Class Member/PAGA Releasee, then this Agreement shall become voidable and
 17 the payments made pursuant to this Agreement to that Class Member/PAGA Releasee shall be
 18 returned to Defendants by that Class Member/PAGA Releasee as to whom the release provisions have
 19 been found unenforceable or invalid. If a court of competent jurisdiction finds any provision, other
 20 than the release provisions of Paragraphs 4.3 and 4.4, or part thereof to be invalid or unenforceable for
 21 any reason, that provision, or part thereof, shall be severed from the Agreement, and all of the
 22 remaining provisions of this Agreement shall remain in full force and effect.

23 8.16 Warranties and Representations. With respect to themselves, each of the Parties to this
 24 Agreement and or their agent or counsel represents, covenants and warrants that (a) they have full
 25 power and authority to enter into and consummate all transactions contemplated by this Agreement
 26 and have duly authorized the execution, delivery and performance of this Agreement; and (b) the
 27 person executing this Agreement has the full right, power and authority to enter into this Agreement
 28 on behalf of the party for whom he/she has executed this Agreement, and the full right, power and

1 authority to execute any and all necessary instruments in connection herewith, and to fully bind such
2 party to the terms and obligations of this Agreement.

3 8.17 Representation by Counsel. The Parties acknowledge that they have been represented
4 by counsel throughout all negotiations that preceded the execution of this Agreement, and that this
5 Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class
6 Counsel warrant and represent that there are no liens on the Agreement, and that Defendants may
7 distribute funds to the Plaintiff Class Members, the PAGA Releasees, Class Counsel, and Plaintiff as
8 provided by this Agreement.

9 8.18 Action to Enforce Agreement. In any suit or court action to enforce the terms of this
10 Agreement, the prevailing party shall be entitled to recover his, her, its, or their attorneys' fees and
11 costs.

12 8.19 Authorization by Plaintiff. Plaintiff authorizes Class Counsel to sign this Agreement
13 and further agrees not to request to be excluded from the Class and not to object to any terms of this
14 Agreement. Any such request for exclusion or objection shall therefore be void and of no force or
15 effect.

16 8.20 Counterparts. This Settlement Agreement shall become effective upon its execution by
17 all of the undersigned. Plaintiff, Class Counsel and Defendants may execute this Settlement
18 Agreement in counterparts, which shall have the same force and effect as if each had signed the same
19 instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and
20 PDF copies of the signature pages) shall have the same force and effect and shall be as legally binding
21 and enforceable as the original.

22 IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the
23 date below their signatures or the signature of their representatives. The date of the Agreement shall
24 be the date of the latest signature.

25 //

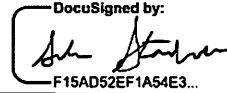
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1 IT IS SO STIPULATED AND AGREED:

2
3 Dated: October 2, 2020

DocuSigned by:

F15AD52EF1A54E3...

SARAH STONEHOCKER

4
5 Dated: October _____, 2020

By: _____

DEIDRA BYRD
ON BEHALF OF KINDRED
HEALTHCARE OPERATING, LLC,
KINDRED REHAB SERVICES, LLC,
KINDRED REHAB SERVICES, INC.,
REHABCARE GROUP EAST, LLC,
REHABCARE GROUP EAST, INC.,
AMERICAN VITALCARE LLC, and
REHABCARE GROUP OF CALIFORNIA,
LLC

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11
12 Dated: October _____, 2020

ELIZABETH STAGGS-WILSON
LISA LIN GARCIA
ALICE H. WANG
LITTLER MENDELSON, P.C.
Attorneys for Defendants
KINDRED HEALTHCARE OPERATING, LLC,
KINDRED REHAB SERVICES, LLC,
KINDRED REHAB SERVICES, INC.,
REHABCARE GROUP EAST, LLC,
REHABCARE GROUP EAST, INC.,
AMERICAN VITALCARE LLC, and
REHABCARE GROUP OF CALIFORNIA, LLC

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20 Dated: October 2, 2020


MATTHEW D. CARLSON
LAW OFFICE OF MATTHEW D. CARLSON
Attorneys for Plaintiff
SARAH STONEHOCKER

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22
23
24
25
26 4831-8333-3571.12

1 IT IS SO STIPULATED AND AGREED:

2
3 Dated: October _____, 2020

4 SARAH STONEHOCKER

5 Dated: October 2, 2020

6 By:


DEIDRA BYRD
ON BEHALF OF KINDRED
HEALTHCARE OPERATING, LLC,
KINDRED REHAB SERVICES, LLC,
KINDRED REHAB SERVICES, INC.,
REHABCARE GROUP EAST, LLC,
REHABCARE GROUP EAST, INC.,
AMERICAN VITALCARE LLC, and
REHABCARE GROUP OF CALIFORNIA,
LLC

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11
12 Dated: October 2, 2020



13
14 ELIZABETH STAGGS-WILSON
LISA LIN GARCIA
ALICE H. WANG
LITTLER MENDELSON, P.C.
Attorneys for Defendants
KINDRED HEALTHCARE OPERATING, LLC,
KINDRED REHAB SERVICES, LLC,
KINDRED REHAB SERVICES, INC.,
REHABCARE GROUP EAST, LLC,
REHABCARE GROUP EAST, INC.,
AMERICAN VITALCARE LLC, and
REHABCARE GROUP OF CALIFORNIA, LLC

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19
20 Dated: October _____, 2020

21
22 MATTHEW D. CARLSON
LAW OFFICE OF MATTHEW D. CARLSON
Attorneys for Plaintiff
SARAH STONEHOCKER

23
24
25
26 4831-8333-3571.12

Exhibit A

EXHIBIT A**Skilled Clinician Positions:**

CERT OCCUP THERA ASST PRN
CERT OCCUP THERAPY ASST
OCCUPATIONAL THER PRN
OCCUPATIONAL THERAPIST
LEAD RT - VITALCARE
PHYSICAL THERAPIST
PHYSICAL THERAPIST PRN
PHYSICAL THERAPY ASST
PHYSICAL THERAPY ASST PRN
PROGRAM DIR I SLP
PROGRAM DIRECTOR I
PROGRAM DIRECTOR I COTA
PROGRAM DIRECTOR I OT
PROGRAM DIRECTOR I PT
PROGRAM DIRECTOR I PTA
PROGRAM DIRECTOR I SLP
RCL OT
RCL OTA
RCL PT
RCL PTA
RCL SLP
REHAB COORD OT
REHAB COORD OT PRN
REHAB COORD PT
REHAB COORD PT PRN
REHAB COORD PTA
REHAB COORD SLP
REHAB COORD SLP PRN
RESPIRATORY THERAPIST
RESPIRATORY THERAPIST PRN
RESPIRATORY THERAPIST - VC
SP LANG PATHOLOGIST PRN
SPEECH LANG PATH CFY
SPEECH LANG PATH CFY PRN
SPEECH LANG PATH PRN
SPEECH LANG PATHOLOGIST

Exhibit B

Matthew D. Carlson (State Bar No. 273242)
mdcarlson@mdcarlsonlaw.com
LAW OFFICE OF MATTHEW D. CARLSON
50 Fountain Plaza, Suite 1400, #206
Buffalo, NY 14202
Telephone: (716) 242-1234

Attorney for Plaintiff SARAH STONEHOCKER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SARAH STONEHOCKER, on behalf of herself
and all others similarly situated

Plaintiff,

v.

KINDRED HEALTHCARE OPERATING, LLC,
KINDRED REHAB SERVICES, LLC,
KINDRED REHAB SERVICES, INC.,
REHABCARE GROUP EAST, LLC,
REHABCARE GROUP EAST, INC.,
AMERICAN VITALCARE, LLC, REHABCARE
GROUP OF CALIFORNIA, LLC and DOES 1-
25,

Defendants.

Case No.: 19-cv-02494-YGR

SECONDED AMENDED COMPLAINT

Complaint Filed: February 14, 2019
(San Francisco Superior Court)

CLASS ACTION

1 Plaintiff Sarah Stonehocker, by and through her attorney, brings this wage and hour class
 2 and Labor Code Private Attorneys General Act representative action against Defendants Kindred
 3 HealthCare Operating, LLC, Kindred Rehab Services, LLC, Kindred Rehab Services, Inc.,
 4 RehabCare Group East, LLC, RehabCare Group East, Inc., American VitalCare, LLC and
 5 RehabCare Group of California, LLC (collectively, "Kindred"), and hereby alleges as follows:
 6

7 **NATURE OF THE ACTION**

8 1. Plaintiff and similarly situated aggrieved employees are current or former Skilled
 9 Clinicians ("Class Members") who have been employed by Kindred to work at Skilled Nursing
 10 Facilities ("SNFs") throughout the State of California. Class Members include physical
 11 therapists, occupational therapists, respiratory therapists, speech therapists, speech language
 12 pathologists, rehabilitation coordinators, rehab clinical leaders and other similar positions that
 13 provide skilled direct patient care at SNFs. Plaintiff's claims arise from Kindred's strict and
 14 impracticable minimum Patient Care Ratio ("minimum PCR") productivity standard and other
 15 productivity standards, and its attendant systemic and failure to pay Class Members for all hours
 16 worked (including but not necessarily limited to overtime hours), provide Class Members with
 17 timely and duty-free meal periods, authorize and permit Class Members to take timely and duty-
 18 free rest periods, provide Class Members with accurate itemized wage statements, maintain
 19 accurate payroll records for Class Members, and pay Class Members all wages when due. These
 20 Labor Code violations are also violations of California's Unfair Competition Law, Cal. Bus. &
 21 Prof. Code § 17200, et seq. ("UCL"), and also subject Kindred to penalties pursuant to the Labor
 22 Code Private Attorneys General Act of 2004 ("PAGA").

23 **JURISDICTION**

24 2. The Court has jurisdiction over this action pursuant to the Class Action Fairness Act of
 25 2005 ("CAFA"), 28 U.S.C. §§ 1331, 1332(d), 1367, and 1453. CAFA vests the United States
 26 district courts with original jurisdiction of any civil action: (a) that is a class action with a
 27 putative class of more than a hundred members; (b) in which any member of a class of Plaintiff
 28

1 is a citizen of a state different from any defendant; and (c) in which the matter in controversy
 2 exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

3 **VENUE**

4 3. This Court is the proper venue for this matter because Plaintiff worked for Kindred in the
 5 Northern District of California.

6 **THE PARTIES**

7 4. Plaintiff Sarah Stonehocker is a citizen of California, domiciled in San Francisco,
 8 California. Plaintiff worked for Kindred as an occupational therapist in several of Kindred's San
 9 Francisco SNFs (Tunnell Center and, from time to time, Lawton and Victorian Centers) from
 10 October 31, 2006, until October 17, 2016, at which time she transitioned to a home health care
 11 position with Kindred. Plaintiff's employment relationship with Kindred ended on December 28,
 12 2019. For a one-month period around July 2015, Plaintiff worked as a temporary first-level
 13 Rehabilitation Manager ("RM"), filling in for Plaintiff's RM and direct superior, during which
 14 time Plaintiff worked as both a SC and as a RM/first level manager of her SC colleagues.

15 5. Kindred Healthcare Operating, LLC is a Delaware limited liability company with its
 16 principal place of business in Louisville, Kentucky, doing business throughout California as
 17 described herein.

18 6. Plaintiff does not know the names or capacities of Does 1-25, but discovery may show
 19 that subsidiaries, affiliates, parent companies, purchasers, and/or joint venturers of or with
 20 Kindred may properly be Defendants in this matter. Discovery may also show that certain
 21 individuals currently unknown to Plaintiff may be liable for some or all of the claims asserted
 22 herein pursuant to Cal. Lab. Code § 588.1.

23 **V. FACTUAL ALLEGATIONS**

24 7. Plaintiff and Class Members were or are employed by Kindred at SNFs throughout
 25 California.

26 8. Class Members who are or employed by Kindred to work at SNFs were typically required
 27
 28

1 to see a specific number of patients based on the length of their shifts. For example, Class
2 Members were typically required to see seven to twelve patients in an eight-hour shift. With
3 respect to each “regular” patient visit (*i.e.*, visits that were not for initial evaluations,
4 reassessments, or discharge), Class Members provided skilled direct patient care, and also
5 performed a minimum of approximately 10-20 minutes per patient of unskilled ancillary work,
6 including, for example, paperwork, chart review, and care team communication. Class Members
7 also spent 15-30 minutes each shift checking in at the beginning of their shifts, obtaining their
8 schedules, and checking out at the end of their shifts. On such eight-hour shifts, Class Members
9 were also typically allotted with two ten-minute rest breaks each day. Thus, during an eight-hour
10 shift, Class Members spent, at minimum, 105 minutes of their 420-minute shifts – 25% of their
11 time – on unskilled work: basic ancillary work, breaks, and shift prep and wrap-up tasks. Class
12 Members frequently spent substantially more than 25% of their shift on unskilled work when
13 they saw patients for initial evaluations, reassessments, and discharge. Class Members also
14 attended weekly or biweekly staff meetings that each took between 30 minutes and one hour,
15 which further reduced the amount of skilled work provided on the days on which staff meetings
16 were held.

17
18 9. Despite this allocation of work time, Kindred maintained the above-mentioned minimum
19 PCR, or patient care ratio, pursuant to which Class Members were required to spend at least 87%
20 of their shift time on skilled direct patient care.

21 10. Kindred and its management rigorously enforced the minimum PCR. For example,
22 Kindred Area Directors (second-level managers) sent to subordinate RMs (first-level managers)
23 throughout California spreadsheets containing, *inter alia*, individual Class Members’ PCRs, with
24 instructions to “get our therapists up to expectations”, “ameliorate the low time spent in direct pt
25 care”, and to “concentrate on the outliers highlighted” in the spreadsheets. Indeed, some Class
26 Members with PCRs below 87% had their names and statistics highlighted in yellow on such
27 spreadsheets. Thus, Class Members who fell below the minimum PCR were reprimanded by
28

1 RMs and were forced to meet with RMs to discuss why they did not meet the minimum PCR and
2 to come up with a plan to meet or exceed the minimum PCR, and RMs frequently posted Class
3 Members' PCRs on viewable bulletin boards. Kindred also implemented a generally applicable
4 policy pursuant to which it paid bonuses to Class Members who maintained PCRs at 87% or
5 higher (87%-89% = 1.5% bonus; 90%-92% = 2.0% bonus; 93%-100% = 2.5% bonus). Thus,
6 Class Members were incentivized and pressured to meet or exceed their minimum PCRs or face
7 adverse employment action, lesser pay, or both. RMs were, in turn, pressured by Area Directors
8 (and likely also incentivized) to have Class Members under their management meet or exceed the
9 minimum PCR, and Area Directors reprimanded RMs when Class Members failed to meet or
10 exceed the minimum PCR.
11

12 11. To meet the various productivity standards set by Kindred, including minimum PCR
13 standards, Class Members were able to do so by performing unpaid and undocumented work,
14 including overtime work, and/or by working through some or all meal and/or rest periods.

15 12. Class Members did not typically report all hours worked to managers, because Kindred
16 sought to limit or eliminate overtime hours worked and managers reprimanded Class Members
17 for working overtime hours. Indeed, management circulated an "overtime watch list" for
18 California "areas". On the infrequent occasions on which Class Members did report overtime
19 hours worked, Kindred management would oftentimes simply change Class Members' time
20 records so that the records showed fewer overtime hours worked than were actually worked, or
21 no overtime hours worked at all.

22 13. As a result of Kindred's failure to pay Class Members for all hours worked (including but
23 not limited to overtime hours worked), failure to provide duty-free meal periods, and failure to
24 authorize and permit duty-free rest periods, Class Members, or an identifiable subset thereof,
25 were not paid wages owed at the time of quitting or discharge.

26 14. As a result of Kindred's failure to pay Class Members for all hours worked (including but
27 not limited to overtime hours worked), failure to provide duty-free meal periods, and failure to
28

1 authorize and permit duty-free rest periods, Class Members were not provided with accurate
2 wage statements.

3 15. As a result of Kindred's failure to pay Class Members for all hours worked (including but
4 not limited to overtime hours worked), failure to provide duty-free meal periods, and failure to
5 authorize and permit duty-free rest periods, Kindred failed to maintain accurate payroll records
6 for Class Members.
7

8 **VI. CLASS ACTION ALLEGATIONS**

9 16. Plaintiff's claims are brought on behalf of herself and all others similarly situated. This
10 putative class is defined as:

11 "All persons who are or were employed by one or more Defendants as non-
12 exempt Skilled Clinicians to work at a skilled nursing facility in California at any
time from February 14, 2015 through September 1, 2020."

13 **A. ASCERTAINABILITY**

14 17. It is administratively feasible to determine the Class Members through Kindred's records
15 because Kindred maintains Class Members' personal information, including contact information
16 and pay records.

17 **B. NUMEROSITY**

18 18. There are at least 2,000 Class Members.

19 **C. COMMONALITY**

20 19. Class Members share common issues of fact, including but not limited to:

21 a. Whether Kindred has had a practice of failing to pay Class Members for all hours
22 worked (including but not limited to minimum wage, straight time and/or overtime
23 compensation) in violation of Cal. Lab. Code §§ 510, 1194, 1197, 1198; Wage Order Nos. 4 and
24 5; and corresponding California Code of Regulations;

25 b. Whether Kindred has had a practice of failing to provide Class Members with
26 accurate wage statements showing the information required by Cal. Lab. Code § 226;
27

28 c. Whether Kindred has had a practice of failing to keep accurate payroll records for

1 Class Members in violation of Cal. Lab. Code §§ 226, 1174 and/or 1174.5;

2 d. Whether Kindred has had a practice of failing to provide Class Members with 30-
3 minute duty-free meal periods when Class Members work more than five hours per day and
4 failing to pay meal break penalties in violation of Cal. Lab. §§ 226.7, 512; Wage Order Nos. 4
5 and 5; and corresponding California Code of Regulations;

6 e. Whether Kindred has had a practice of failing to authorize and permit Class
7 Members to take 10-minute duty-free rest periods for every four hours of Class Members' work
8 time or major fraction thereof and failing to pay rest break penalties in violation of Cal. Lab. §
9 226.7; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations; and
10

11 f. Whether Kindred has had a practice of failing to timely pay Class Members
12 during employment and Class Members who have been discharged or who have quit their wages
13 when due in violation of Cal. Lab. Code §§ 201-204.

14 20. Class Members share common issues of law, including:

15 a. Whether Kindred's practice of failing to pay Class Members for all hours worked
16 (including but not limited to overtime hours) is in violation of Cal. Lab. Code §§ 510, 1194,
17 1197, 1198, Wage Order Nos. 4 and/or 5 and/or corresponding California Code of Regulations;

18 b. Whether Kindred's practice of failing to keep accurate time and payroll records
19 for Class Members is in violation of Cal. Lab. Code §§ 226, 1174, 1174.5, Wage Order Nos. 4
20 and/or 5 and/or corresponding California Code of Regulations;

21 c. Whether Kindred's practice of failing to provide Class Members with accurate
22 wage statements is in violation of Cal. Lab. Code § 226;

23 d. Whether Kindred's practice of failing to provide Class Members with 30-minute
24 duty-free meal periods when Class Members work more than five hours per day and failing to
25 pay meal break penalties is in violation of Cal. Lab. Code §§ 226.7, 512, Wage Order Nos. 4
26 and/or 5 and/or corresponding California Code of Regulations;

27 e. Whether Kindred's practice of failing to authorize and permit Class Members to
28

1 take 10-minute duty-free rest periods for every four hours of Class Members' work time or major
 2 fraction thereof and failing to pay rest break penalties is in violation of Cal. Lab. Code § 226.7,
 3 Wage Order Nos. 4 and/or 5 and/or corresponding California Code of Regulations; and

4 f. Whether Kindred's practice of failing to timely pay all wages due to Class
 5 Members during their employment and Class Members who have been discharged or who have
 6 quit their wages when due is in violation of Cal. Lab. Code §§ 201, 202, 203 and 204.

7 21. The common issues of law can be answered with proof common to Class Members,
 8 including:
 9

- 10 a. Kindred's practices with respect to productivity;
- 11 b. Kindred's practices with respect to off the clock work performed;
- 12 c. Kindred's practices with respect to payroll records
- 13 d. Kindred's practices with respect to wage statements;
- 14 e. Kindred's practices with respect to meal periods;
- 15 f. Kindred's practices with respect to rest periods;
- 16 g. Kindred's practices with respect to timely paying employees all wages due during
 17 their employment;
- 18 h. Kindred's practices with respect to timely paying employees all wages due who
 19 have been discharged or who have quit; and
- 20 i. All other facts common to the putative class alleged above.

21 **D. TYPICALITY**

22 22. Plaintiff's claims are typical, if not identical, to the claims that could be asserted by Class
 23 Members, as Plaintiff's claims arise from Kindred's systemic failure to (1) properly compensate
 24 Plaintiff and Class Members for all hours worked (including but not necessarily limited to
 25 overtime hours); (2) provide them with accurate wage statements; (3) provide Class Members
 26 with timely and duty-free meal periods; (4) authorize and permit Class Members to take timely
 27 and duty-free rest periods; (5) maintain accurate payroll records for Class Members; and (6) pay
 28

Class Members all wages when due.

E. ADEQUACY

23. Plaintiff is a Class Member and will fairly and adequately represent and protect the interests of Class Members. Plaintiff has no conflicts of interests with Class Members.

24. Counsel for Plaintiff is competent and experienced in litigating wage and hour class action.

F. PREDOMINANCE

25. Common questions of law and fact predominate over individual issues in this action because the issue of Kindred's liability for the wage and hour violations identified herein can be established as to all Class Members with proof of Kindred's substantially uniform pay practices.

G. SUPERIORITY

26. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because of the relatively small monetary value of the claims asserted by Class Members, most if not all Class Members would likely find the cost of individually litigating their claims against Kindred to be prohibitive. Further, thousands of individual proceedings in lieu of a class action would be an unnecessary burden on the court system as well as the parties. Additionally, many Class Members may be unaware that they have legal recourse against Kindred for the conduct alleged herein.

VII. FIRST CLAIM

Failure to Pay Minimum Wage, Straight Time and/or Overtime Wages

**Cal. Lab. Code §§ 510, 1194, 1197, 1198, Wage Order 4 and/or 5 and Corresponding
California Code of Regulations**

27. Plaintiff, on behalf of herself and Class Members, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

28. Pursuant to California law, Kindred was and/or is the employer of Plaintiff and Class Members.

29. Cal. Lab. Code § 1198, Wage Order 4 and 5 and corresponding California Code of Regulations require employers to pay their employees at their overtime rate of pay for hours worked in excess of eight per day and/or 40 per week.

30. Cal. Lab. Code § 1194 states that any employee receiving less than the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

31. Cal. Lab. Code § 1197, Wage Order 4 and 5 and corresponding California Code of Regulations require that minimum wage for employees fixed by the Industrial Welfare Commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.

32. Plaintiff and Class Members worked for Kindred but were not properly compensated for such work. Kindred therefore have violated the provisions of the applicable Wage Orders, California Code of Regulations and Labor Code sections that require proper compensation for all hours worked.

33. As a result of Kindred's unlawful conduct, Plaintiff and Class Members are owed back payment for their hours worked, plus attorneys' fees and costs of suit.

VIII. SECOND CLAIM

Failure to Furnish Accurate Wage Statements

Cal. Lab. Code § 226

34. Plaintiff, on behalf of herself and Class Members, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

35. Pursuant to California law, Kindred was and/or is the employer of Plaintiff and Class Members.

36. Cal. Lab. Code § 226 states that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check,

1 draft, or voucher paying the employee's wages, or separately when wages are paid by personal
 2 check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
 3 total hours worked by the employee, except for any employee whose compensation is solely
 4 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
 5 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
 6 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
 7 deductions, provided that all deductions made on written orders of the employee may be
 8 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
 9 which the employee is paid, (7) the name of the employee and only the last four digits of his or
 10 her social security number or an employee identification number other than a social security
 11 number, (8) the name and address of the legal entity that is the employer and, if the employer is a
 12 farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the
 13 legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect
 14 during the pay period and the corresponding number of hours worked at each hourly rate by the
 15 employee and, beginning July 1, 2013, if the employer is a temporary services employer as
 16 defined in Section 201.3, the rate of pay and the total hours worked for each temporary services
 17 assignment.
 18

19 37. Kindred unlawfully failed to provide Plaintiff and Class Members with accurate itemized
 20 wage statements in writing showing total hours worked and/or all applicable hourly rates.
 21 Further, for example, as a result of Kindred failing to pay all wages and meal and/or rest break
 22 premiums owed to Plaintiff and Class Members, the listed gross wages are also inaccurate.

23 38. Plaintiff and Class Members suffered injury as a result of Kindred's conduct because, for
 24 example, they could not readily ascertain their true hours worked and their true wages owed from
 25 the wage statements provided.

26 39. The injuries suffered by Plaintiff and Class Members as a result of this misconduct were
 27 as a result of Kindred's knowing and intentional failure to comply with Cal. Lab. Code § 226(a).
 28

40. Accordingly, Plaintiff and each Class Member are entitled to recover fifty dollars for the initial pay period in which a violation of § 226 occurred, and one hundred dollars for each violation of § 226 in a subsequent pay period, not to exceed a penalty of four thousand dollars per Class Member plus attorney fees, costs, and injunctive relief.

IX. THIRD CLAIM

Failure to Provide Compliant Meal Periods

Cal. Lab. Code §§ 226.7, 512, Wage Order 4 and/or 5 and Corresponding California Code of Regulations

41. Plaintiff, on behalf of herself and Class Members, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

42. Pursuant to California law, Kindred was and/or is the employer of Plaintiff and Class Members.

43. Cal. Lab. Code §§ 226.7, 512, Wage Order 4 and 5 and corresponding California Code of Regulations require employers to provide all employees with one 30-minute duty-free meal period if such employee works more than five hours in one day and a second 30-minute duty-free meal period if such employee work more than 10 hours in one day and require employers to pay a meal break penalty for non-compliance with California meal break requirements.

44. Kindred did not provide Plaintiff and Class Members with 30-minute duty-free meal periods as required by California law

45. Accordingly, pursuant to Cal. Lab. Code § 226.7, Wage Order 4 and/or 5 and corresponding California Code of Regulations, Plaintiff and Class Members are entitled one hour of pay at their regular rate of pay for each day on which the Class Member was not provided with a 30-minute duty-free meal period, plus interest.

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X. FOURTH CLAIM

Failure to Authorize and Permit Compliant Rest Periods

Cal. Lab. Code § 226.7, Wage Order 4 and/or 5 and Corresponding California Code of Regulations

46. Plaintiff, on behalf of herself and Class Members, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

47. Pursuant to California law, Kindred was and/or is the employer of Plaintiff and Class Members.

48. Wage Order 4 and 5 and corresponding California Code of Regulations require employers to authorize and permit all employees to take one 10-minute duty-free rest period for every four hours worked each day, or major fraction thereof and require employers to pay a rest break penalty for non-compliance with California rest break requirements.

49. Kindred did not provide Plaintiff and Class Members or an identifiable subset thereof with 10-minute duty-free rest periods as required by California law.

50. Accordingly, pursuant to Cal. Lab. Code § 226.7, Wage Order 4 and/or 5 and corresponding California Code of Regulations, Plaintiff and Class Members are entitled one hour of pay at their regular rate of pay for each day on which the Class Member was not provided with a 10-minute duty-free rest period, plus interest.

XI. FIFTH CLAIM

Failure to Pay Wages When Due

Cal. Lab. Code §§ 201, 202, 203, 204

51. Plaintiff, on behalf of herself and Class Members, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

52. Pursuant to California law, Kindred was and/or is the employer of Plaintiff and Class Members.

53. Cal. Lab. Code § 201 states that if an employer discharges an employee, the wages

1 earned and unpaid at the time of discharge are due and payable immediately. Cal Lab. Code §
 2 202 states If an employee not having a written contract for a definite period quits his or her
 3 employment, his or her wages shall become due and payable not later than 72 hours thereafter,
 4 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
 5 case the employee is entitled to his or her wages at the time of quitting. Cal. Lab. Code § 204
 6 require wages be due at least twice during each calendar month.
 7

8 54. Kindred failed to timely pay Plaintiff and Class Members or an identifiable subset thereof
 9 all of their wages earned during their employment and upon the termination of their respective
 10 employment relationships with Kindred.

11 55. Accordingly, pursuant to Cal. Lab. Code § 203, Plaintiff and Class Members are entitled
 12 to waiting time penalties.

13 **XII. SIXTH CLAIM**

14 **Failure to Keep Accurate Employment Records**

15 **Cal. Lab. Code §§ 226, 1174, 1174.5, Wage Order 4 and/or 5 and Corresponding California**
 16 **Code of Regulations**

17 56. Plaintiff, on behalf of herself and Class Members, realleges and incorporates by reference
 18 the allegations in the preceding paragraphs as if fully alleged herein.

19 57. Pursuant to California law, Kindred was and/or is the employer of Plaintiff and Class
 20 Members.

21 58. Labor Code § 1174(d) requires that every employer in California maintain “payroll
 22 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
 23 units earned by and any applicable piece rate paid to, employees employed” in California. In
 24 addition, Cal. Lab. Code § 1174(d) requires that these records “be kept in accordance with rules
 25 established for this purpose by the [Industrial Welfare] commission.”

26 59. Rules established by the Industrial Welfare Commission, Wage Order 4 and 5, § 7, and
 27 the corresponding California Code of Regulations require that every employer in California
 28

“keep accurate information with respect to each employee,” including without limitation, “time records showing when the employee begins and ends each work period,” as well as “[m]eal periods, split shift intervals and total daily hours worked.”

60. Cal. Lab. Code § 226 requires employers to keep information specified by Cal. Lab. Code § 226(a).

61. Kindred failed to maintain accurate records in compliance with Cal. Lab. Code § 1174(d), § 226, Wage Order 4 and/or 5 and corresponding California Code of Regulations for Plaintiff and Class Members.

62. Accordingly, Plaintiff and Class Members are entitled to collect and seek a civil penalty from Kindred pursuant to Cal. Lab. Code § 1174.5 and/or § 226.

XIII. SEVENTH CLAIM

Unlawful, Unfair, or Fraudulent Business Practices

Cal. Bus. & Prof. Code § 17200, *et seq.*

63. Plaintiff, on behalf of herself and Class Members, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

64. Pursuant to California law, Kindred was and/or is the employer of Plaintiff and Class Members.

65. Kindred’s violations of the above cited Labor Code provisions, Wage Order 4 and/or 5 and/or corresponding California Code of Regulations constitute unlawful, unfair and/or fraudulent business practices prohibited by California Business & Professions Code § 17200, *et seq.* and are independently actionable under California Business & Professions Code § 17200, *et seq.*

66. As described above, Kindred’s violations of the California Labor Code, Wage Order 4 and/or 5 and/or corresponding California Code of Regulations caused Plaintiff and Class Members irreparable harm, and Plaintiff and Class Members are therefore entitled to restitution in the amount of this harm, as well as injunctive and declaratory relief.

67. Plaintiff are further entitled to, and do, seek a declaration that the above described business practices are unlawful, unfair and/or fraudulent and also seek injunctive relief restraining Kindred from engaging in any of these unlawful, unfair and/or fraudulent business practices.

XIV. EIGHTH CLAIM

Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004

(Representative Action)

68. Plaintiff, on behalf of “All persons who are or were employed by one or more Kindred-Affiliated Entities as non-exempt Skilled Clinicians to work at a skilled nursing facility in California at any time from February 14, 2018 through September 1, 2020”, realleges and incorporates by reference the allegations in the preceding paragraphs as if fully alleged herein.

69. Cal. Lab. Code § 2699 provides for civil penalties for violations of California Labor Code provisions that may be recovered through a civil action brought by an aggrieved employee.

70. Plaintiff and all current and former SCs in California are aggrieved employees as defined by Cal. Lab. Code § 2699(c) because they suffered injury as a result the following Labor Code violations committed by Kindred: Cal. Lab. Code §§ 201, 202, 203, 204 (failure to pay SCs wages when due); § 226 (failure to provide SCs with properly itemized statements); §§ 226.7, 512 (failure to provide or authorize and permit SCs with uninterrupted, duty-free meal and rest periods); §§ 510, 1194, 1197, and 1198 (failure to pay SCs wages for hours worked, including but not limited to overtime hours)); §§ 226, 1174, 1174.5 (failure to maintain employment and/or payroll records).

71. Plaintiff has complied with the notice requirement of Cal. Lab. Code § 2699.3 by sending written notice by certified mail to Defendant and electronic notice to the California Labor & Workforce Development Agency (“LWDA”) with respect to all Labor Code, Industrial Welfare Commission Wage Order and California Code of Regulations violations asserted in this Complaint.

72. It has been 65 days or more since the LWDA was notified of certain Labor Code violations asserted in this Complaint, and the LWDA has not provided any notice that it will or will not investigate the alleged violations of which it was informed.

73. Kindred has not cured the Labor Code violations of which it was informed.

74. As a result, Plaintiff are entitled to recover, and seek, civil penalties, attorney fees, and costs of suit herein.

PRAYER FOR RELIEF

75. Plaintiff, on behalf of themselves and the members of each putative class, pray for relief as follows:

- a. Certification of this action as a class action as described herein;
- b. Designation of Plaintiff as representatives of the putative class;
- c. Designation of Plaintiff's Counsel as Class Counsel for the putative class;
- d. Damages (including liquidated damages) for failure to pay minimum, straight time and/or overtime wages, failure to provide meal periods, and failure to authorize and permit rest periods;
- e. In the alternative to such damages, restitution pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.*
- f. Statutory penalties, including pursuant to Cal. Lab. Code §§ 226, 203, and 1174.5;
- g. Civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004;
- h. Injunctive and declaratory relief pursuant to Cal. Bus. & Prof. Code § 17200, *et seq.*;
- i. Pre-judgment and post-judgment interest pursuant to the California Labor Code and Cal. Civ. Code § 3287;
- j. Declaratory relief;
- k. Attorneys' fees as provided by the California Labor Code, or as provided by the parties' agreement, if any;

- 1 l. Costs as provided by the California Labor Code, Fed. R. Civ. P. 54(d), Local Rule
- 2 54-3, and/or Cal. Code Civ. P. § 1021, or as provided by the parties' agreement, if
- 3 any; and
- 4 m. Any other relief the Court deems proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, by and through her attorney, hereby request a jury trial on all issues so triable.

7
8
9 Dated: October 1, 2020

LAW OFFICE OF MATTHEW D. CARLSON

10
11 By: /s/ Matthew D. Carlson

12 Matthew D. Carlson

13 Attorney for Plaintiff

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Exhibit C

**NOTICE OF PAGA AND CLASS ACTION SETTLEMENT
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA**

SARAH STONEHOCKER, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

KINDRED HEALTHCARE OPERATING, LLC,
KINDRED REHAB SERVICES, LLC,
KINDRED REHAB SERVICES, INC.,
REHABCARE GROUP EAST, LLC,
REHABCARE GROUP EAST, INC.,
REHABCARE GROUP OF CALIFORNIA,
LLC, AMERICAN VITALCARE LLC and
DOES 1 through 25 inclusive,

Defendants.

CASE NO.: 4:19-cv-02494-YGR

**NOTICE OF PAGA AND CLASS ACTION
SETTLEMENT**

<<FIRST AND LAST NAME>>

<<ADDRESS>>

<<CITY AND ZIP CODE>>

To: All persons who are or were employed by Defendants Kindred Healthcare Operating, LLC, Kindred Rehab Services, LLC, Kindred Rehab Services, Inc., RehabCare Group East, LLC, RehabCare Group East, Inc., American VitalCare LLC or RehabCare Group of California, LLC as non-exempt Skilled Clinicians at a skilled nursing facility in California at any time from February 14, 2015 through September 1, 2020.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED
SETTLEMENT.

**TO RECEIVE YOUR SHARE OF THIS SETTLEMENT, YOU DO NOT NEED TO DO
ANYTHING.**

This Notice is Court Approved. This is not a solicitation from an attorney.

1. WHY DID I GET THIS NOTICE?

You received this Notice because a proposed settlement (the "Settlement") has been reached in the class action and representative lawsuit entitled *Sarah Stonehocker, on behalf of herself and all others similarly situated, vs. Kindred Healthcare Operating, LLC, et al.* which is

pending in the United States District Court for the Northern District of California as Case No. 4:19-cv-02494-YGR (hereinafter referred to as the “Action”).

The Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 17, below.

2. WHAT IS THE ACTION ABOUT?

This Action alleges that Defendants Kindred Healthcare Operating, LLC, Kindred Rehab Services, LLC, Kindred Rehab Services, Inc., RehabCare Group East, LLC, RehabCare Group East, Inc., American VitalCare, LLC and RehabCare Group of California, LLC (collectively referred to as “Defendants”) violated applicable provisions of the California Labor Code, the California Business and Professions Code and the California Industrial Welfare Commission’s (the “IWC”) Wage Orders including the following: (1) Failure to Pay Minimum Wage, Straight Time and/or Overtime Wages [Cal. Labor Code §§ 510, 1194, 1197, 1198; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (2) Failure to Furnish Accurate Wage Statements [Cal. Labor Code § 226]; (3) Failure to Provide Compliant Meal Periods [California Labor Code §§ 226.7 and 512; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (4) Failure to Authorize and Permit Compliant Rest Periods [California Labor Code § 226.7 and Wage Order Nos. 4 and 5; and corresponding California Code of Regulations]; (5) Failure to Pay Wages When Due [California Labor Code §§ 201, 202, 203 and 204] (6) Failure to Keep Accurate Employment Records [California Labor Code §§ 226, 1174, 1174.5; Wage Order Nos. 4 and 5; and corresponding California Code of Regulations] (7) Unlawful, Unfair, or Fraudulent Business Practices (California Business & Professions Code § 17200 *et seq.*); and (8) Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [Cal. Labor Code § 2698 *et seq.*].

Defendants deny all allegations of wrongdoing and maintains that they complied at all times with applicable laws, rules, and regulations at issue in this litigation.

The Parties engaged in contested litigation, including discovery of hundreds of pages of documents over the Class Period, including documents and information concerning Defendants’ timekeeping; meal period and rest break policies; Defendants’ communications, training materials, procedures for managing payment for all hours worked; and time and payroll data. The Parties engaged in motion practice before the Court, and participated in extensive settlement negotiations, including a private mediation. Those negotiations led to an agreement to settle the case, which was memorialized in a formal Joint Stipulation and Class and Representative Action Settlement Agreement and Release. The Court has approved the PAGA portion of the Settlement and preliminarily approved the Class portion of the Settlement. The Court has not ruled on the merits of the lawsuit.

3. WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Plaintiff Sarah Stonehocker (hereinafter “Plaintiff”) is the person who is bringing this Action on your behalf and on behalf of other similarly situated employees.

In the Action, Plaintiff seeks to represent you on a class basis. A class action allows the Court to resolve the claims of all the members of the Class at the same time. A class member is bound by the determination or judgment entered in the case, whether the class wins or loses, and may not file his or her own lawsuit on the same claims that were decided in the class action. A class action allows one court to resolve all of the issues in a lawsuit for all the members of the Class who choose not to exclude themselves from the class.

4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All persons who are or were employed by one or more Defendants as non-exempt Skilled Clinicians at a skilled nursing facility in California at any time from February 14, 2015 through September 1, 2020 (the “Class”). The period from February 14, 2015 through September 1, 2020 is the “Class Period.” The term “Skilled Clinicians” mean all individual who have held one or more of the following positions: CERT OCCUP THERA ASST PRN, CERT OCCUP THERAPY ASST, OCCUPATIONAL THER PRN, OCCUPATIONAL THERAPIST, LEAD RT – VITALCARE, PHYSICAL THERAPIST, PHYSICAL THERAPIST PRN, PHYSICAL THERAPY ASST, PHYSICAL THERAPY ASST PRN, PROGRAM DIR I SLP, PROGRAM DIRECTOR I, PROGRAM DIRECTOR I COTA, PROGRAM DIRECTOR I OT, PROGRAM DIRECTOR I PT, PROGRAM DIRECTOR I PTA, PROGRAM DIRECTOR I SLP, RCL OT, RCL OTA, RCL PT, RCL PTA, RCL SLP, REHAB COORD OT, REHAB COORD OT PRN, REHAB COORD PT, REHAB COORD PT PRN, REHAB COORD PTA, REHAB COORD SLP, REHAB COORD SLP PRN, RESPIRATORY THERAPIST, RESPIRATORY THERAPIST PRN, RESPIRATORY THERAPIST – VC, SP LANG PATHOLOGIST PRN, SPEECH LANG PATH CFY, SPEECH LANG PATH CFY PRN, SPEECH LANG PATH PRN, and/or SPEECH LANG PATHOLOGIST.

The identities of the members of the Class have been ascertained from records of Defendants. You are receiving this Notice because such records show that you are a member of the Class.

5. WHAT ARE THE BENEFITS OF SETTLEMENT TO THE CLASS?

Plaintiff, on one hand, and Defendants, on the other hand, disagree as to whether there is any liability, including but not limited to: (1) whether the case is appropriate for treatment as a class or representative action; (2) whether the settlement Class is owed any unpaid wages, premiums, or penalties; and (3) the amount of unpaid wages, premiums, or penalties owed, if any. Defendants raised numerous defenses to Plaintiff’s claims and those defenses could significantly reduce or even eliminate any liability or damages owed to the Class. Accordingly, there were significant risks to the Class associated with continuing the lawsuit and significant benefits to settling the lawsuit short of trial. The Settlement was negotiated by the Parties after thorough examination of time and payroll records. Having considered the benefits and risks associated with further litigation, counsel for Plaintiff (“Class Counsel”) determined that settlement of the case under the terms described in this Notice is a fair and reasonable compromise that is in the best interests of the Class. Finally, there was a hearing on **[insert Preliminary Approval Date]** in the United States District Court in the Northern District of California, at which time the Court approved the PAGA portion of the Settlement and preliminarily approved the Class portion of the Settlement as being fair and reasonable to the members of the Class.

6. WHAT ARE THE TERMS OF THE PAGA SETTLEMENT?

In bringing this lawsuit, Plaintiff is seeking, among other things, civil penalties pursuant to the Labor Code Private Attorneys General Act (“PAGA”), a law which allows Plaintiff to stand in the shoes of the government and try and recover penalties on the government’s behalf and on behalf of those employees Plaintiff claims were “aggrieved” by Defendants’ alleged violation of California Labor laws, including claims for unpaid wages (including minimum, regular and overtime wages), untimely wage payments both during and at the end of employment, non-compliant meal periods, non-compliant rest periods, and non-compliant wage statements and employment records, and failure to pay penalties (including but not limited to waiting time and wage statement penalties) in connection with work performed by all persons who are or were employed by one or more Defendants as non-exempt Skilled Clinicians to work at a skilled nursing facility in California at any time from February 14, 2018 through September 1, 2020 (the “PAGA Releasees”).

It is important to note that Defendants deny these claims and they further deny that they owe any penalties to the government or to you, and assert that they have fully complied with all applicable wage and hour laws. Nevertheless, to avoid further costs and time in defending the lawsuit, Defendants have agreed to settle the case.

Defendants have agreed to pay a total of \$1,995,000 (the “Gross Settlement Fund”) to settle all claims arising out of the lawsuit. The Court has approved the PAGA portion of the Settlement, and \$130,000 of the Gross Settlement Fund is being paid to resolve the PAGA Claims described below (“PAGA Payment”). \$97,500, or seventy-five percent (75%) of the PAGA Payment, will be paid to the California Labor and Workforce Development Agency, as required by law. \$32,500, or twenty-five percent (25%) of the PAGA Payment will be paid to the PAGA Releasees. The PAGA Releasees will receive a payment representing their pro-rata share of the PAGA Payment (the “PAGA Payment Checks”). A PAGA Releasee’s portion of the PAGA Payment is based on the proportionate number of PAGA Pay Periods the PAGA Releasee worked as compared to the total number of PAGA Pay Periods worked by all PAGA Releasees. A “PAGA Pay Period” means the number of pay periods worked by PAGA Releasees for one or more Defendants during the PAGA Settlement Period as regularly recorded on Defendants’ payroll system. The “PAGA Settlement Period” means the period beginning on February 14, 2018 through September 1, 2020.

Based on Defendants’ records, you [are not a PAGA Releasee and are not eligible to receive a portion of the PAGA Payment **or** you are a PAGA Releasee and had worked ____ PAGA Pay Periods between February 14, 2018 and September 1, 2020 and your estimated share of the PAGA Payment is \$ ____]. If you will receive a PAGA Payment Check, 100% of the PAGA Payment Check is considered penalties and you may be issued an IRS Form 1099 for your share of the PAGA Payment.

Any questions or disagreements regarding your PAGA Pay Periods or the amount of your PAGA Payment Check should be directed to the Settlement Administrator at the address listed in Section 17 below.

7. WHAT ARE THE TERMS OF THE CLASS PORTION OF THE SETTLEMENT?

As stated above, Defendants have agreed to pay a total of \$1,995,000 to settle all claims arising out of the Action. After the PAGA Payment, the remainder of the Gross Settlement Fund will be used to pay members of the Class for the settlement and release of the Settled Claims described below, settlement administration costs estimated to be no greater than \$22,500, attorneys' fees for Class Counsel estimated not to exceed \$665,000, reasonable costs/expenses for Class Counsel not to exceed \$15,000, and a "service award" to Plaintiff as the Class Representative not to exceed \$5,000. The balance of the settlement (the "Net Settlement Fund") will be distributed to members of the Class who do not timely and properly opt out (the "Plaintiff Class Members"). The Plaintiff Class Members will receive a payment representing their pro-rata share of the Net Settlement Amount (the "Individual Settlement Payments").

A Plaintiff Class Member's Individual Settlement Payment is based on the proportionate number of the Class Pay Periods the Plaintiff Class Member worked as compared to the total number of Class Pay Periods worked by all Plaintiff Class Member. A "Class Pay Period" means the number of pay periods worked by Class Members for one or more Defendants during the Settlement Period as regularly recorded on Defendants' payroll system. The "Settlement Period" means the period beginning on February 14, 2015 through September 1, 2020.

Based on Defendants' records, you had worked [REDACTED] Class Pay Periods between February 14, 2015 and September 1, 2020 and your estimated share of the Individual Settlement Payment is \$[REDACTED]. 20% of the Individual Settlement Payment will be considered wages, and will be reported on an IRS Form W-2, and 80% of the Individual Settlement Payment will be considered civil penalties and interest, and will be reported on an IRS Form 1099 misc., if required.

8. WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT?

You do not need to do anything to participate in the Settlement. You will be mailed your PAGA Settlement Payment (if applicable) and Individual Settlement Payment from this Settlement approximately 70 days after the Final Approval Hearing on [Date of Final Approval Hearing], if the Court approves the Class Settlement and no appeals are filed. Class Counsel have been appointed and approved by the Court and Class Counsel will represent you. You also will be bound by the Settlement, including the release of claims stated above.

Upon receipt of your settlement checks, it will be your responsibility to cash the checks before the expiration date of the checks (90 days after mailing). **You will not be retaliated against for cashing your settlement checks.** Any funds payable to Plaintiff Class Members and/or PAGA Releasees whose checks are not cashed within 90 days after mailing will be transferred by the Settlement Administrator to a court-approved cy pres beneficiary. The Parties have proposed the First Responders Children's Foundation COVID-19 Emergency Response Fund, an organization that provides financial and other support to COVID-19 first responders, including skilled clinicians at skilled nursing facilities who provide care to COVID-19 patients, and their families, to be the cy pres beneficiary. The failure to cash any check within 90 days after mailing does not affect the binding nature of the Settlement or the binding nature of any release of claims.

You may dispute your Individual Settlement Payment and your share of the PAGA Payment by following the below instructions. Your Individual Settlement Payment award is based on the proportionate number of Class Pay Periods. Your share of the PAGA Payment is based on the proportionate number of PAGA Pay Periods.

The information contained in Defendants' records regarding this information, along with your estimated Individual Settlement Payment and your estimated share of the PAGA Payment, is listed above. If you disagree with the number of Class Pay Periods and/or the number of PAGA Pay Periods, you may submit a written challenge. For the challenge to be deemed valid, it must include: (i) the full name of the person making the challenge; (ii) a statement that the person seeking the challenge are seeking to challenge his or her estimated Individual Settlement Payment and/or PAGA Payment Check set forth in the Class Notice; (iii) state the number of Class Pay Periods the person seeking the challenge believes he or she has worked between February 14, 2015 and September 1, 2020 and/or the number of PAGA Pay Periods the person seeking the challenge believes he or she has worked between February 14, 2018 and September 1, 2020; (iv) include documentation to support the challenge (such as paystubs, cancelled checks, etc.); and (v) the person seeking the challenge must sign the document. All such challenges must be mailed to the Settlement Administrator at the address listed in Section 17 below with a postmark date on or before **[insert date]**. Please be advised that the number of Class Pay Periods and PAGA Pay Periods stated in this Notice is presumed to be correct unless the documents you submit prove otherwise. DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Class Members and/or PAGA Releasees. Defendants' personnel records, including payroll records, will be considered by the Settlement Administrator and the Parties as the presumptive best evidence of the number of Class Pay Periods and the number of PAGA Pay Periods.

9. HOW DOES THE SETTLEMENT AFFECT MY RIGHTS?

The Settlement is intended to settle and fully release and discharge any and all claims against Defendants, RehabCare Group Management Services, LLC, RehabCare Group, Inc., RehabCare Hospital Holdings, L.L.C., and any of its or their past, present and future direct or indirect parents, subsidiaries, affiliates and any skilled nursing facility clients as to whom any Class Member or PAGA Releasee may have provided services through any or all Defendants as well as each of its or their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with any or all Defendants (collectively referred to as the "Released Parties") from any and all PAGA Claims (defined below) and Released Claims (defined below) to the maximum extent permitted by law.

Upon the entry of the Final Approval Order and to the maximum extent permitted by law, Plaintiff and all Plaintiff Class Members (*i.e.*, all Class Members who do not properly opt-out) and all persons purporting to act on the Plaintiff Class Members' behalf or purporting to assert a claim under or through them, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from

all disputes, claims and/or causes of action pleaded or which could have been pleaded arising, in whole or in part, from the facts, claims and/or allegations contained in the Complaint, the First Amended Complaint, the Second Amended Complaint, and/or the PAGA Notice during the Settlement Period, including the following:

- a. Any claims for unpaid wages (including minimum, regular and overtime wages), untimely wage payments both during and at the end of employment, non-compliant meal periods, non-compliant rest periods, non-compliant wage statements, non-compliant recordkeeping, and claims for interest, penalties (including but not limited to waiting time penalties), or premiums in connection therewith, as well as any claims under the Fair Labor Standards Act, the California Labor Code, California Industrial Welfare Commission Wage Orders and corresponding California Code of Regulations, alleged or which could have been alleged based, in whole or in part, on the facts, allegations and/or claims pleaded in the Complaint, the First Amended Complaint or the Second Amended Complaint in this Action or the PAGA Notice;
- b. Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged based, in whole or in part, on the facts, allegations and/or claims pleaded in the Complaint, the First Amended Complaint or the Second Amended Complaint in this Action or the PAGA Notice; and
- c. Any and all other claims under California common law, the California Labor Code including but not limited to the Private Attorneys General Act, the Fair Labor Standards Act, California Industrial Welfare Commission Wage Orders, corresponding California Code of Regulations, and the California Business and Professions Code alleged in or that could have been alleged under the allegations and/or claims pleaded in Complaint, the First Amended Complaint or the Second Amended Complaint in this Action or the PAGA Notice.

The above claims will be collectively referred to as the “**Released Claims**” or “**Settled Claims**.” Plaintiff Class Members will receive an Individual Settlement Payment check containing the following language: “I understand that by cashing, depositing, or otherwise negotiating this check I will be deemed to have opted into *Sarah Stonehocker, on behalf of herself and all others similarly situated, vs. Kindred Healthcare Operating, LLC et al.*, Case No. 4:19-cv-02494-YGR for purposes of the federal Fair Labor Standards Act (FLSA) release to the extent required to do so under applicable law for purposes of the court-approved settlement therein.” The Plaintiff Class Members are bound by the release of the Settled Claims in its entirety regardless of whether they cash their Individual Settlement Payment check.

Upon the Court’s approval of the PAGA Payment and release of PAGA Claims, but contingent upon entry of the Final Approval Order, Plaintiff and the PAGA Releasees and all persons purporting to act on the PAGA Releasees’ behalf or purporting to assert a claim under or through them, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all PAGA claims premised in whole or in part on any of the Settled Claims during the PAGA Settlement Period (collectively, the “**PAGA Claims**”). The PAGA Releasees will not have the

opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims set forth in this Paragraph. The PAGA Releasees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

If you are a member of the Class and you do not elect to properly and timely opt out from the class portion of the Settlement, you will be deemed to have released the above-described Released Claims. However, you will still be bound by the release of the PAGA Claims regardless of whether or not you opt out of the Class or cash your PAGA Settlement Payment. If the entire Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

10. WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

PAGA Releasees will not have the opportunity to opt out of the PAGA Payment and/or release of PAGA Claims. However, if you do not want to be bound by the remaining terms of the settlement, including receipt of the above Individual Settlement Payment and the above release of the Released Claims, you may exclude yourself ("opt out") by sending written notice of your intention to opt out to the Settlement Administrator at the address listed in Section 17 below.

The opt-out request must be in writing and include (i) your full name; (ii) a statement that you request exclusion from the Class and does not wish to participate in the Class Settlement; and (iii) your signature. ***Any opt-out request must be postmarked no later than [insert date of the close of the Notice Period].***

Should you choose to timely exclude yourself from the class portion of the Settlement, the money that you would have otherwise received from the class portion of the Settlement will be distributed amongst the remaining participating Plaintiff Class Members. However, to the extent you are eligible to receive a portion of the PAGA Payment, you will still receive that amount whether or not you submit an Opt-Out Request. This is because there is no right to be excluded from the release of PAGA Claims that is part of this Settlement.

11. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any member of the Class who has not opted out can ask the Court to deny approval of the settlement by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

You may object to the proposed settlement in writing, except you may not object to the PAGA Payment and release of PAGA Claims. You may also appear at the Final Approval Hearing, either in person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney.

All written objections and supporting papers must (a) clearly identify the case and number (*Stonehocker v. Kindred Healthcare Operating, LLC*, Case No. 4:19-cv-02494-YGR), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Suite 400 S, Oakland, CA 94612,

or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before [insert date of the close of the Notice Period]. Class Members who fail to timely mail or file such a written statement of objection shall be foreclosed from making any objection to this Settlement

12. WILL THE NAMED PLAINTIFF BE COMPENSATED FOR BRINGING THIS LAWSUIT?

Plaintiff will request a service award of up to \$5,000 for her service as Class Representative and for her efforts in bringing the Action. The Court will make the final decision as to the amount to be paid to Plaintiff.

13. DO I HAVE A LAWYER IN THIS CASE?

Yes. The Court has ordered that the interest of Plaintiff and the Class are represented by counsel for Plaintiff as follows:

MATTHEW D. CARLSON, Bar No. 273242
mdcarlson@mdcarlsonlaw.com
LAW OFFICE OF MATTHEW D. CARLSON
50 Fountain Plaza, Suite 1400, #206
Buffalo, NY 14202
Telephone: (716) 242-1234

("Class Counsel"). You will not be separately charged for this attorney. If you want to be represented by your own lawyer, you may hire one at your own expense. If you have questions about the case or the Settlement, you should ask Class Counsel.

14. WHAT IS THE FINAL APPROVAL HEARING?

The Court has approved the PAGA portion of the Settlement and preliminarily approved the class portion of the Settlement. The Court will hold a hearing to decide whether to give final approval to the class portion of the Settlement. The purpose of the Final Approval Hearing will be for the Court to determine whether the class portion of the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for enhancement award to Plaintiff.

15. WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold the Final Approval Hearing on [insert date] at [insert time] a.m., in Courtroom 1 on the Fourth Floor of the Ronald V. Dellums Federal Building and United States Courthouse, which is located at 1301 Clay Street, Oakland, CA 94612 ("Final Approval Hearing").

The Final Approval Hearing may be continued without further notice to the Class. It is not necessary for you to appear at the Final Approval Hearing unless you have timely filed an objection with the Court. However, you have the right to attend the Final Approval Hearing and be

represented by your own counsel at your own expense. If you plan to attend the Final Approval Hearing, you may contact Class Counsel to confirm the date and time.

16. MAY I SPEAK AT THE FINAL APPROVAL HEARING?

At the hearing, the Court will be available to hear any objections and arguments concerning the Settlement. You may attend, but you do not have to attend. You may speak at the Final Approval Hearing only if (a) you have timely served and filed an objection, and (b) followed the procedures set forth in Section 11 above to provide notice that you intend to speak at the Final Approval Hearing. If you opt out from the class portion of the Settlement, however, you may not speak at the Final Approval Hearing.

17. HOW DO I GET MORE INFORMATION?

This Notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Joint Stipulation and Class and Representative Action Settlement Agreement and Release, the Complaints and the PAGA Notice available by contacting Class Counsel at the address or telephone number set forth above, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, Ronald V. Dellums Federal Building and United States Courthouse, 1301 Clay Street, Suite 400 S, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may also contact the Settlement Administrator at the address and telephone number listed below, toll free. Please refer to the "Stonehocker vs. Kindred Healthcare Operating, LLC Class Action Settlement."

[INSERT NAME AND CONTACT INFORMATION OF SETTLEMENT ADMINISTRATOR]

ALL DISPUTES CONCERNING CLASS PAY PERIODS AND/OR PAGA PAY PERIODS AS WELL AS OPT-OUT REQUESTS MUST BE MAILED TO THE SETTLEMENT ADMINISTRATOR AT THE ADDRESS LISTED ABOVE. ALSO, ALL QUESTIONS AND INQUIRIES REGARDING ADMINISTRATION OF THE SETTLEMENT MAY BE DIRECTED TO THE SETTLEMENT ADMINISTRATOR.

18. WHAT IF MY INFORMATION CHANGES?

It is your responsibility to keep a current address and telephone number on file with the Settlement Administrator, to ensure receipt of your settlement checks for the Individual Settlement Payment and PAGA Payment Check and applicable tax forms if the settlement is given final approval by the Court. If you change your mailing address, you should promptly contact the Settlement Administrator and provide the Settlement Administrator your new address and contact information.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE
LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE**

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