

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 WEST SEVENTH STREET, SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125
Roy K. Suh, Esq.
roy.suh@moonyanglaw.com

May 15, 2023

Via Online Submission @ <https://dir.tfaforms.net/310>

Labor Workforce Development Agency, Department of Industrial Relations

Attn: PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Re: Notice of Pending Settlement Pursuant to Labor Code Section 2699(l)(2), LWDA Case No. LWDA-CM-809234-20

Employee: Kimberley Caro

Employer: Kindred Healthcare Operating, LLC.

Dear Labor and Workforce Development Agency:

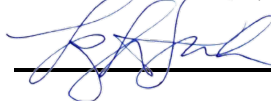
Moon & Yang, APC (sometimes “M&Y”) represents Plaintiff Kimberley Caro (“Plaintiff”) in a class and representative action entitled *Caro v. Kindred Healthcare Operating, LLC, et al.*, which is now pending in San Bernardino County Superior Court, Case No. CIVDS2022513 (the “Action”). The Action involves Plaintiff’s PAGA claims alleged in LWDA Case No. LWDA-CM-809234-20.

Now, in accordance with Labor Code Section 2699(l)(2), Plaintiff, as a deputized PAGA representative provides the LWDA notice of a pending settlement in the Action, which seeks the release of PAGA claims against Defendant Kindred Healthcare Operating, LLC. In light of this, Plaintiff has attached a copy of a March 16, 2023 Class Action and PAGA Settlement Agreement and Class Notice, which has or will be filed in the Action.

A preliminary approval hearing regarding the settlement is set for 10:00 a.m., June 7, 2023, or as soon thereafter as the matter may be heard, in Department S26 of the San Bernardino Superior Court, located at 247 West Third Street, San Bernardino, California 92415.

Please do not hesitate to contact the undersigned with any inquiries.

MOON & YANG, APC



ROY K. SUH

Attorneys for Plaintiff MARK CASTELLANOS

Attachment:

20230316 Settlement Agreement

Kane Moon (Cal. SBN 249834)
kane.moon@moonyanglaw.com
 Roy K. Suh (Cal. SBN 283988)
roy.suh@moonyanglaw.com
 Lilit Ter-Astvatsatryan (Cal. SBN 320389)
lilit@moonyanglaw.com
MOON & YANG, APC
 1055 West Seventh Street, Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125

Attorneys for Plaintiff KIMBERLY CARO

Jyoti Mittal (Cal. SBN 288084)
jmittal@littler.com
LITTLER MENDELSON, P.C.
 2049 Century Park East, Fifth Floor
 Los Angeles, California 90067
 Telephone: (310) 553-0308
 Facsimile: (310) 553-5583

Attorneys for Defendants KINDRED
 HEALTHCARE OPERATING, LLC and THC –
 ORANGE COUNTY, LLC

Elizabeth Staggs-Wilson (Cal. SBN 183160)
estaggs-wilson@littler.com
 James Payer (Cal. SBN 292158)
jpayer@littler.com

LITTLER MENDELSON, P.C.
 633 West Fifth Street, 63rd Floor
 Los Angeles, California 90071
 Telephone: (213) 443-4300
 Facsimile: (213) 443-4299

Attorneys for Defendants KINDRED
 HEALTHCARE OPERATING, LLC and THC –
 ORANGE COUNTY, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO – CENTRAL JUSTICE CENTER

KIMBERLY CARO, individually, and on behalf of
 all others similarly situated,

Plaintiff,

v.

KINDRED HEALTHCARE OPERATING, LLC,
 a Delaware corporation; THC – ORANGE
 COUNTY, LLC, a limited liability company; and
 DOES 1 through 10, inclusive,

Defendants.

Case No. CIVDS2022513

*Assigned for all purposes to the Honorable David
 Cohn, Department S26*

JOINT STIPULATION AND SETTLEMENT AGREEMENT OF CLASS ACTION AND REPRESENTATIVE ACTION CLAIMS

PAGA Case No.

LWDA-CM-809234-20:

Oct. 9, 2020

Action Filed:

Oct. 13, 2020

FAC Filed:

Dec. 23, 2020

SAC Filed:

Mar. 20, 2022

TAC Filed:

Dec. 1, 2022

Trial Date:

None Set

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**JOINT STIPULATION AND SETTLEMENT AGREEMENT OF CLASS ACTION AND
REPRESENTATIVE ACTION CLAIMS**

I. INTRODUCTION AND MUTUAL INTENT TO SETTLE

1. Stipulating Parties and the Action. This Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Kimberly Caro and Plaintiff Brenda Leslie (“Plaintiffs” or “Named Plaintiffs”), individually, and on behalf of all others similarly situated, and Defendant Kindred Healthcare Operating, LLC, Defendant THC-Orange County, LLC, and Defendant KND Development 53, LLC (“Defendants”) (jointly with Plaintiffs, the “Parties”) in *Caro v. Kindred Healthcare Operating, LLC, et al.*, San Bernardino Superior Court, Case No. CIVDS2022513, (the “Action”).

2. Stipulating Parties’ Joint Statement of Intent to Settle as a Class Action and Representative Action. The Parties intend that this Settlement Agreement shall be subject to Court approval and that it shall fully, finally, forever resolve, discharge, settle, and finally adjudge this Action as a class action and representative action, and, accordingly, THE PARTIES STIPULATE AND AGREE as follows:

II. DEFINITIONS

3. Action. “Action” shall mean *Caro v. Kindred Healthcare Operating, LLC, et al.*, San Bernardino Superior Court, Case No. CIVDS2022513, which shall encompass the factual allegations and all claims in the Operative Complaint.

4. Caro Class Action Lawsuit. “Caro Class Action Lawsuit” or “Caro” shall mean the action entitled *Kimberly Caro, individually, and on behalf of all others similarly situated v. Kindred Healthcare Operating, LLC, a Delaware Corporation; THC – Orange County, LLC, a limited liability company; and DOES 1 through 10, inclusive*, pending in San Bernardino County Superior Court, Case No. CIVDS2022513, filed on October 13, 2020.

5. Caro PAGA Employees. “Caro PAGA Employees” shall mean all persons who are Settlement Class Members who were employed at THC Locations during the *Caro* PAGA Period.

6. Caro PAGA Period. “Caro PAGA Period” shall mean the time period from October 9, 2019 to the date the Court enters a Preliminary Approval Order, or to an earlier date at Defendants’ option.

7. Caro Settlement Class. “Caro Settlement Class” shall mean all current and former non-

1 exempt, hourly-paid employees of Defendants Kindred Healthcare Operating, LLC and THC – Orange
2 County, LLC, employed in California at THC Locations from August 1, 2016 to the date the Court enters
3 a Preliminary Approval Order, or to an earlier date at Defendants’ option, except for Defendant THC-
4 Orange County, LLC’s employees who released claims as part of the *Kirby* Class Action Lawsuit and who
5 only worked prior to January 11, 2021 at THC Locations.

6 8. Caro Settlement Class Period. “Caro Settlement Class Period” shall mean the time period
7 from August 1, 2016 to the date the Court enters a Preliminary Approval Order, or to an earlier date at
8 Defendants’ option.

9 9. Caro/Leslie-Workweeks. “Caro/Leslie-Workweeks” shall mean the aggregate number of
10 workweeks subject to Qualified Class Members’ releases under this Settlement Agreement, which include
11 all workweeks in the *Caro* Settlement Class Period and the *Leslie* Settlement Class Period, based on
12 Defendants’ representation that the extrapolated calculated number of workweeks for the *Caro* Class
13 Action Lawsuit and the *Leslie* Class Action Lawsuit through and until the date of mediation did not exceed
14 297,268 workweeks. *Caro/Leslie-Workweeks* do not include *Song-Workweeks* or any workweeks
15 released under the settlement in the *Kirby* Class Action Lawsuit.

16 10. Class Counsel. “Class Counsel” or “Settlement Class Counsel” shall mean Kane Moon,
17 Esq., Roy K. Suh, Esq., and Lilit Ter-Astvatsatryan, Esq. of Moon & Yang, APC.

18 11. Class Counsel Cost Award. “Class Counsel Cost Award” shall mean the amount not
19 exceeding Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), payable from the Gross Settlement
20 Amount and due to Class Counsel for reimbursement of Class Counsel’s reasonable litigation expenses
21 incurred in litigating and resolving the Action; if the Court finally approves a lesser amount, then the
22 difference shall remain part of the Net Settlement Amount.

23 12. Class Counsel Fee Award. “Class Counsel Fee Award” means the amount of no less than
24 Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) or one-third (1/3) of the Gross Settlement
25 Amount, whichever is greater, payable from the Gross Settlement Amount and due to Class Counsel as
26 reasonable attorneys’ fees for litigating and resolving the Action; if the Court finally approves a lesser
27 amount, then the difference shall remain part of the Net Settlement Amount.

28 13. Class Notice. “Class Notice” shall mean the Notice of Class and Representative Action

Settlement, substantially in the form attached as **Exhibit 1**, summarizing this Settlement Agreement, as approved by the Court.

14. Court. “Court” shall mean the Superior Court of the State of California for the County of San Bernardino and the judicial officer presiding over this Action.

15. Defendants. “Defendants” shall mean Defendant Kindred Healthcare Operating, LLC, Defendant THC-Orange County, LLC, and Defendant KND Development 53, LLC.

16. Defendants’ Counsel. “Defendants’ Counsel” shall mean Elizabeth Staggs-Wilson, Esq., Jyoti Mittal, Esq., and James Payer, Esq. of Littler Mendelson, P.C.

17. Effective Date. “Effective Date” shall have the meaning ascribed to it in Paragraph 66, below.

18. Enhancement Awards. “Enhancement Awards” shall mean the amounts not exceeding Ten Thousand Dollars and Zero Cents (\$10,000.00) for each of the Plaintiffs, payable from the Gross Settlement Amount and due to Plaintiffs, separate from any Individual Settlement Payments and Individual PAGA Payments, for Plaintiffs’ efforts and risks in bringing and resolving the Action; if the Court finally approves lesser amounts, then the difference shall remain part of the Net Settlement Amount.

19. Final Approval Hearing. “Final Approval Hearing” shall mean the hearing whereat the Court shall consider, without limitations, any timely objections to the Settlement from Settlement Class Members, testimony from the Parties or their counsel, declaration(s) of due diligence and proof of mailing with regard to the mailing of the Class Notice from the Settlement Administrator, and otherwise make a final determination regarding the fairness, reasonableness, and adequacy of the Settlement as set forth herein.

20. Final Approval Order. “Final Approval Order” shall mean the Court’s order, substantially in the form attached as **Exhibit 3**, which shall, among other things, finally approve the fairness, reasonableness, and adequacy of this Settlement Agreement.

21. Final Judgment. “Final Judgment” shall mean the Court’s judgment, substantially in the form attached as **Exhibit 4**, which shall, among other things, finally adjudge this Action.

22. Gross Settlement Amount. “Gross Settlement Amount” or “GSA” shall mean the non-reversionary amount of no less than Two Million, Four Hundred Thousand Dollars, and Zero Cents

1 (\$2,400,000.00), which, subject to Defendants' Escalation Election options, shall be the maximum amount
 2 Defendants shall pay pursuant to this Settlement, excluding Defendants' share of payroll taxes, which
 3 shall be paid by Defendants separately and in addition to the Gross Settlement Amount.

4 23. Individual PAGA Employee Payment. "Individual PAGA Employee Payment" shall mean
 5 a PAGA Employee's pro rata share of the PAGA Employee Payment payable to PAGA Employees.

6 24. Individual Settlement Payment. "Individual Settlement Payment" shall mean a Qualified
 7 Class Member's pro rata share of the Net Settlement Amount payable to Qualified Class Members.

8 25. Kirby Class Action Lawsuit. "Kirby Class Action Lawsuit" shall mean the action entitled
 9 *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino
 10 Superior Court, Case No. CIVDS1708958, and resulted in a finally adjudged settlement (1) covering all
 11 of Defendant THC-Orange County, LLC's non-clinical, non-exempt employees and CNAs who were
 12 employed as of May 21, 2020 in California for the period between May 13, 2013 and January 11, 2021
 13 and (2) releasing all claims pertaining to (a) failure to pay minimum and overtime wages, (b) failure to
 14 provide compliant meal and rest periods, (c) failure to reimburse business expenses, (d) derivative waiting
 15 time penalties, (e) derivative wage statement penalties, and (f) PAGA penalties.

16 26. KND Location. "KND Location" shall mean Kindred Hospital – South Bay.

17 27. Lawsuits. "Lawsuits" shall mean the *Caro* Class Action Lawsuit and the *Leslie* Class
 18 Action Lawsuit, collectively.

19 28. Leslie Class Action Lawsuit. "*Leslie* Class Action Lawsuit" or "*Leslie*" shall mean the
 20 action entitled *Brenda Leslie, individually, and on behalf of all others similarly situated v. KND*
 21 *Development 53, LLC, a Delaware corporation; Kindred Healthcare Operating, LLC, a limited liability*
 22 *company; and DOES 1 through 10, inclusive*, pending in Los Angeles County Superior Court, Case No.
 23 21STCV07110, filed on February 23, 2021.

24 29. Leslie PAGA Employees. "*Leslie* PAGA Employees" shall mean all persons who are
 25 Settlement Class Members who were employed at the KND Location during the *Leslie* PAGA Period.

26 30. Leslie PAGA Period. "*Leslie* PAGA Period" shall mean the time period from February 23,
 27 2020 to the date the Court enters a Preliminary Approval Order, or to an earlier date at Defendants' option.

28 31. Leslie Settlement Class. "*Leslie* Settlement Class" shall mean all current and former non-

1 exempt, hourly-paid employees of Defendants Kindred Healthcare Operating, LLC and KND
2 Development 53, LLC employed in California at the KND Location during the *Leslie* Settlement Class
3 Period.

4 32. Leslie Settlement Class Period. “*Leslie* Settlement Class Period” shall mean the time period
5 from February 23, 2017 to the date the Court enters a Preliminary Approval Order, or to an earlier date at
6 Defendants’ option.

7 33. LWDA. “LWDA” means the California Labor and Workforce Development Agency.

8 34. Net Settlement Amount. “Net Settlement Amount” or “NSA” shall mean the aggregate
9 amount payable to Qualified Class Members, which shall be determined by subtracting the PAGA
10 Payment, Settlement Administration Costs, Enhancement Awards, Class Counsel Fee Award, and Class
11 Counsel Cost Award from the Gross Settlement Amount.

12 35. Operative Complaint. “Operative Complaint” shall mean and refer to the Fourth Amended
13 Complaint, attached hereto as **Exhibit A**.

14 36. PAGA. “PAGA” shall mean the California Labor Code Private Attorneys General Act,
15 Labor Code §§ 2698 *et seq.*

16 37. PAGA Claims. “PAGA Claims” shall have the meaning ascribed to it in Paragraph 91
17 below.

18 38. PAGA Employee Payment. “PAGA Employee Payment” shall mean the aggregate amount
19 of Thirty-Seven Thousand, Five Hundred Dollars, and Zero Cents (\$37,500.00) or the twenty-five percent
20 (25%) share of the PAGA Payment, payable from the Gross Settlement Amount and due to PAGA
21 Employees.

22 39. PAGA Employees. “PAGA Employees” shall mean the *Caro* PAGA Employees and *Leslie*
23 PAGA Employees, collectively.

24 40. PAGA LWDA Payment. “PAGA LWDA Payment” shall mean the amount of One
25 Hundred Twelve Thousand, Five Hundred Dollars, and Zero Cents (\$112,500.00) or the seventy-five
26 percent (75%) share of the PAGA Payment, payable from the Gross Settlement Amount and due to the
27 LWDA.

28 41. PAGA Payment. “PAGA Payment” shall mean the amount of One Hundred Fifty Thousand

Dollars and Zero Cents (\$150,000.00), payable from the Gross Settlement Amount and due to the LWDA in a seventy-five percent (75%) share or One Hundred Twelve Thousand, Five Hundred Dollars, and Zero Cents (\$112,500.00) as the PAGA LWDA Payment, and due to PAGA Employees in a twenty-five percent (25%) share or Thirty-Seven Thousand, Five Hundred Dollars, and Zero Cents (\$37,500.00) as the aggregate PAGA Employee Payment, for the release of all PAGA Claims as alleged in the Action.

42. Plaintiffs. "Plaintiffs" or "Named Plaintiffs" shall mean Plaintiff Kimberly Caro and Plaintiff Brenda Leslie, collectively.

43. Preliminary Approval Order. "Preliminary Approval Order" shall mean the Court's order, substantially in the form attached as **Exhibit 2**, which shall, among other things, preliminarily approve the fairness, reasonableness, and adequacy of this Settlement Agreement.

44. Qualified Class Members. "Qualified Class Members" shall mean Plaintiffs and Settlement Class Members who do not submit a timely and valid request for exclusion from this Settlement.

45. Released Claims. "Released Claims" shall have the meaning ascribed to it in Paragraph 90 and subparagraphs 90.a., 90.b., and 90.c. below.

46. Released Parties. "Released Parties" shall mean Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including but not limited to Scion Health, Kindred Healthcare, LLC, Kindred Healthcare, Inc., Kindred Healthcare Operating, LLC, Kindred Healthcare Operating, Inc., KND Development 53, LLC, THC-Orange County, Inc., and THC-Orange County, LLC as well as each of their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity who could be jointly liable with Defendants for any of the Released Claims.

47. Settlement Administration Costs. "Settlement Administration Costs" shall mean the amount estimated not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), payable from the Gross Settlement Amount and due to the Settlement Administrator for the Settlement Administrator's administration of the notice and settlement fund distribution process pursuant to this Settlement Agreement and the Court's orders; if the Court finally approves a lesser amount, then the difference shall remain a part of the Net Settlement Amount.

48. Settlement Administrator. "Settlement Administrator" shall mean Simpluris, Inc., who the

Parties have agreed to request the Court appoint as the third-party settlement administrator to perform notice and settlement administration duties pursuant to this Settlement Agreement.

49. Settlement Classes. “Settlement Classes” shall mean the *Caro* Settlement Class and *Leslie* Settlement Class, collectively.

50. Settlement Class Member. “Settlement Class Members” shall mean any individual who is a member of the Settlement Classes.

51. Song Class Action Lawsuit. “Song Class Action Lawsuit” shall mean the action entitled *Emmy Song v. THC-Orange County, Inc.*, which was pending in the United States District Court for the Central District of California, Case No. 8:17-cv-00965-JLS-DFMx, and resulted in a finally adjudged settlement (1) covering all of Defendant THC-Orange County, LLC’s non-exempt employees in California for the period between June 6, 2013 and February 28, 2019 and (2) releasing all claims pertaining to (a) failure to pay minimum wage and overtime, (b) derivative wage statement penalties, (c) derivative waiting time penalties, and (d) PAGA penalties.

52. Song-Workweeks. “Song-Workweeks” shall mean the approximately 182,372 workweeks worked by *Caro* Settlement Class Members between August 1, 2016 and February 28, 2019 and covered by the *Song* Class Action Lawsuit, which only released claims pertaining to (a) failure to pay minimum wage and overtime wages, (b) derivative wage statement penalties, (c) derivative waiting time penalties, and (d) PAGA penalties.

53. THC Locations. “THC Locations” shall mean Kindred Hospital – Brea, Kindred Hospital – Los Angeles, Kindred Hospital – Ontario, Kindred Hospital – San Francisco Bay Area, Kindred Hospital – San Diego, and Kindred Hospital – Westminster.

III. RELEVANT PROCEDURAL HISTORY

54. Plaintiff Caro’s 10/09/20 PAGA Notice, 03/17/22 Amended PAGA Notice, and 09/09/22 Second Amended PAGA Notice. On October 9, 2020, as amended on March, 17, 2022, and as amended on September 9, 2022, Plaintiff Caro sent a PAGA notice to the LWDA and Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC, in LWDA Case No. LWDA-CM-809234-20, alleging Defendants violated various provisions of the California Labor Code and other laws along with the facts and theories supporting the alleged violations including those alleged in the Action.

55. Plaintiff Caro's 10/13/20 Complaint in the Caro Class Action Lawsuit, the 12/23/20 Caro FAC, the 03/17/22 Caro SAC, and the 12/01/22 Caro TAC. On October 9, 2020, Plaintiff Caro filed the Caro Class Action Lawsuit alleging Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC's (1) failure to pay minimum and regular rate wages; (2) failure to pay overtime wages; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to furnish accurate itemized wage statements; (7) failure to pay timely and all wages due to discharged and quitting employees; and (8) unfair and unlawful business practices. On December 23, 2020, Plaintiff Caro filed the Caro First Amended Complaint, which added a ninth cause of action, as further amended on March, 17, 2022 (Caro SAC), and as further amended on December 1, 2022 (Caro TAC), alleging Defendants' (1) failure to pay minimum and regular rate wages; (2) failure to pay overtime wages; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to furnish accurate itemized wage statements; (7) failure to pay timely and all wages due to discharged and quitting employees; and (8) unfair and unlawful business practices and (9) conduct giving rise to PAGA civil penalties.

56. Plaintiff Leslie's 02/22/21 PAGA Notice and 09/09/22 Amended PAGA Notice. On February 22, 2021, as amended on September 9, 2022, Plaintiff Leslie sent a PAGA notice to the LWDA and Defendant Kindred Healthcare Operating, LLC and Defendant KND Development 53, LLC, in LWDA Case No. LWDA-CM-822384-21, alleging Defendants violated various provisions of the California Labor Code and other laws along with the facts and theories supporting the alleged violations including those alleged in the Action.

57. Plaintiff Leslie's 02/23/21 Complaint in the Leslie Class Action Lawsuit and the 05/31/21 Leslie FAC. On February 23, 2021 Plaintiff Leslie filed the Leslie Class Action Lawsuit alleging Defendant Kindred Healthcare Operating, LLC and Defendant KND Development 53, LLC's (1) failure to pay minimum and regular rate wages; (2) failure to pay overtime wages; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to furnish accurate itemized wage statements; (7) failure to pay timely and all wages due to discharged and quitting employees; and (8) unfair and unlawful

business practices. On May 13, 2021, Plaintiff Leslie filed the *Leslie* First Amended Complaint, which added a ninth cause of action, alleging Defendants' (1) failure to pay minimum and regular rate wages; (2) failure to pay overtime wages; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to furnish accurate itemized wage statements; (7) failure to pay timely and all wages due to discharged and quitting employees; and (8) unfair and unlawful business practices and (9) conduct giving rise to PAGA civil penalties.

IV. RECITALS

58. Mediation and Agreement to Settle the Action. On September 27, 2022, following exchange and extensive review of relevant documents and class data in the *Caro* Class Action Lawsuit and the *Leslie* Class Action Lawsuit, the Parties engaged in a full-day mediation with experienced wage and hour class action mediator Francis J. Ortman III, which resulted the Parties' execution of a memorandum of understanding forming the basis of this Settlement Agreement.

59. No Admissions by Defendants. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the claims in the Lawsuits, and further deny that, for any purpose other than settling the Lawsuits, class action or representative treatment is appropriate for the Lawsuits.

60. Parties' Mutual Desire to Fully and Finally Settle the Lawsuits in this Action. It is the Parties' desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the allegations in the Lawsuits.

61. Parties' Intent to Fully and Finally Settle When the Effective Date Occurs. It is the Parties' intent that this Settlement Agreement shall constitute a full and complete settlement and release of all Released Claims and PAGA Claims (as defined in Paragraphs 90 and subparagraphs 90.a., 90.b., and 90.c., and Paragraph 91) against all Released Parties and that this Settlement shall become effective on the Effective Date, as defined in Paragraph 66, below.

62. Plaintiffs and Class Counsel's Discovery and Investigation. Plaintiffs and Class Counsel have conducted a thorough investigation into the facts of the Lawsuits, including an extensive review of relevant documents and data in the *Caro* Class Action Lawsuit and the *Leslie* Class Action Lawsuit, and have diligently pursued an investigation of the Settlement Class Members' claims against Defendants.

63. Fairness, Reasonableness, and Adequacy of Settlement. Based on Class Counsel's independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendants is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risks of significant delay, that the Settlement Classes are not certified, and the defenses asserted by Defendants. Defendants and Defendants' Counsel also agree that the Settlement is in the best interests of the Settlement Class Members. Counsel for the Parties further agree that the Settlement is fair, reasonable, and adequate with respect to civil penalties sought pursuant to PAGA.

64. Parties' Agreement to Cooperate to Consummate this Settlement. The Parties agree to work diligently and cooperatively to present this Settlement Agreement to the Court and to take all steps necessary and appropriate to consummate this Settlement in accordance with the terms of this Settlement Agreement.

V. TERMS OF SETTLEMENT

65. Agreement to Settle as a Class Action and Representative Action Subject to Court Approval. In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, that the Lawsuits and any claims, demands, liabilities, penalties, damages or causes of action of any kind whatsoever claimed by Plaintiffs on behalf of themselves, the Settlement Class Members, and/or the PAGA Employees arising out of the disputes which are the subject of the Lawsuits, shall be settled and compromised, subject to the terms and conditions set forth in this Settlement Agreement.

66. Effective Date of Settlement. The Settlement embodied in this Settlement Agreement shall become effective when all of the following events have occurred ("Effective Date"): (i) this Settlement Agreement has been executed by Plaintiffs, Defendants, Class Counsel, and Defendants' Counsel; (ii) the Court entered a Preliminary Approval Order; (iii) the Class Notice has been sent to the Settlement Class Members, providing them notice and opportunity to object to the Settlement, and notice and opportunity to opt out of the Settlement; (iv) notice of this Settlement has been sent to the LWDA; (v) the Court has held a Final Approval Hearing and entered a Final Approval Order and Final Judgment; and (vi) the later of the following events: five (5) court days after the period for filing any appeal, writ, or other appellate

1 proceeding opposing the Final Approval Order or Final Judgment has elapsed without any appeal, writ,
2 or other appellate proceeding having been filed (i.e., 65 days from the date the Court enters Final Approval
3 Order and Final Judgment); or, if any appeal, writ, or other appellate proceeding opposing the Final
4 Approval Order or Final Judgment has been filed within that timeframe, then five (5) court days after any
5 appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively
6 dismissed with no right to pursue further remedies or relief.

7 67. Plaintiffs' Fourth Amended Complaint. As a condition of this Settlement, Plaintiffs shall
8 file a Fourth Amended Complaint in the *Caro* Class Action Lawsuit prior to seeking preliminary approval
9 of the Settlement, which shall be the Operative Complaint, a copy of which is attached as **Exhibit A**.
10 Plaintiffs shall file amend the complaint such that the Operative Complaint includes Plaintiff Brenda
11 Leslie as a plaintiff, encompasses all of Plaintiff Leslie's respective claims, and adds Defendant KND
12 Development 53, LLC as a party for purposes of settlement only. Defendants shall be permitted to file an
13 Answer within 30 days after the Operative Complaint is filed, after which the Parties shall jointly seek an
14 immediate vacation or stay of pending dates, pending approval by the Court of this Settlement.

15 68. Gross Settlement Amount. To implement the terms of this Settlement, Defendants agree to
16 pay a total payment of Two Million, Four Hundred Thousand Dollars, and Zero Cents (\$2,400,000.00),
17 which shall include Individual Settlement Payments to Qualified Class Members (excluding any
18 appropriate and lawfully required employer-side payroll taxes owed by Defendants on such payments
19 which Defendants shall be separately responsible for apart from the Gross Settlement Amount),
20 Enhancement Awards to the Named Plaintiffs, the PAGA Payment (which includes the PAGA LWDA
21 Payment and the PAGA Employee Payment), Settlement Administration Costs, the Class Counsel Fee
22 Award, the Class Counsel Cost Award, and any other payments provided by this Settlement. Except as
23 otherwise specified herein, Defendants shall not be required to pay any additional monies beyond the
24 amount of the Gross Settlement Amount plus the employer-side payroll taxes.

25 68.a. GSA – Non-Reversionary and No Claim Form Submission Requirement for
26 Individual Settlement Payments. No portion of the Gross Settlement Amount shall revert to Defendants
27 and all Individual Settlement Payments to Qualified Class Members shall not require any claim form
28 submission and shall be paid on a pro rata basis according to the formula contained herein.

68.b. GSA – Covering Caro/Leslie-Workweeks and Song-Workweeks. Defendants represent that the extrapolated calculated number of *Caro/Leslie-Workweeks* for the *Caro* Class Action Lawsuit and the *Leslie* Class Action Lawsuit through and until the date of mediation was estimated not to exceed 297,268 workweeks (the “*Caro/Leslie-Workweeks*”) and the number of *Song-Workweeks* for which a subset of claims shall be released is 182,372 workweeks, for a total of approximately 479,640 overall workweeks that the Gross Settlement Amount covers under this Settlement.

69. GSA and Defendants’ “Escalation Election” Options Based on Caro/Leslie Workweeks Only. If *Caro/Leslie-Workweeks* through the date the Court enters a Preliminary Approval Order exceeds the *Caro/Leslie-Workweeks* count by more than 10% (i.e., if the 297,268 *Caro/Leslie-Workweeks* includes more than 29,727 additional workweeks) such that the total number of *Caro/Leslie-Workweeks* subject to Settlement Class Members’ release of Released Claims exceeds 326,994, then at the option of Defendants, Defendants shall either elect to move the end dates for the *Caro* Settlement Class Period and the *Leslie* Settlement Class Period or elect to increase the Gross Settlement Amount as explained below (“Escalation Election”).

69.a. Defendants’ Escalation Election Option to Shorten the Settlement Class Periods. If total number of *Caro/Leslie-Workweeks* subject to Settlement Class Members’ release of Released Claims exceeds 326,994, then Defendants shall have the option of moving the *Caro* Settlement Class Period and the *Leslie* Settlement Class Period to the latest dates before the date the Court enters a Preliminary Approval Order so that the total number of workweeks subject to Settlement Class Members’ release of Released Claims does not exceed 326,994.

69.b. Defendants’ Alternative Escalation Election Option to Increase GSA. If total number of *Caro/Leslie-Workweeks* subject to Settlement Class Members’ release of Released Claims exceeds 326,994, then Defendants shall have the option of increasing the Gross Settlement Amount by the additional workweeks exceeding 326,994 by five dollars and zero cents (\$5.00) per workweek. For example, if the total number of *Caro/Leslie-Workweeks* subject to Settlement Class Members’ release of Released Claims is 345,000, then there would be an additional 18,006 workweeks at a value of \$5.00 per workweek and the Defendants would have to increase the Gross Settlement Amount by \$90,030.

70. GSA as a Qualified Settlement Fund. The Parties agree that the Gross Settlement Amount

1 shall qualify as a settlement fund pursuant to the requirements of section 468(B)(g) of the Internal Revenue
2 Code of 1986, as amended, and section 1.468B-1 *et seq.* of the income tax regulations. Furthermore, the
3 Settlement Administrator shall be designated as the “Administrator” of the qualified settlement funds for
4 purposes of section 1.46B-2(k) of the income tax regulations. As such, all taxes imposed on the gross
5 income of the Gross Settlement Amount and any tax-related expenses arising from any income tax return
6 or other reporting document that may be required by the Internal Revenue Service or any state or local
7 taxing body shall be paid from the Gross Settlement Amount.

8 70.a. Defendants’ Funding of GSA Within 10 Days of Effective Date. Within ten (10)
9 calendar days of the Effective Date, Defendants shall transfer to the Settlement Administrator an amount
10 equal to the Gross Settlement Amount plus the employer’s share of payroll taxes. The delivery of the
11 Gross Settlement Amount and the employer’s share of payroll taxes to the Settlement Administrator shall
12 constitute full and complete discharge of the entire obligation of Defendants. Once Defendants have made
13 such payments, Defendants shall be deemed to have satisfied all terms and conditions under this
14 Settlement, shall be entitled to all protections afforded to Defendants under this Settlement, and shall have
15 no further obligations under the terms of the Settlement regardless of what occurs with respect to those
16 sums.

17 70.b. Settlement Administrator’s Disbursement of GSA Within 10 Days of GSA
18 Funding. Within ten (10) calendar days of Defendants’ transfer of the Gross Settlement Amount to the
19 Settlement Administrator in full, the Settlement Administrator shall disburse the Gross Settlement
20 Amount, which shall include the following distributions: (1) Enhancement Awards to the Named
21 Plaintiffs; (2) the PAGA LWDA Payment to the LWDA; (3) the PAGA Employee Payment to PAGA
22 Employees; (4) Settlement Administration Costs to the Settlement Administrator; (5) the Class Counsel
23 Fee Award to Class Counsel; (6) the Class Counsel Cost Award to Class Counsel; and (7) the Net
24 Settlement Amount to Qualified Class Members.

25 71. Allocation of the GSA into Component Amounts for Purposes of Disbursement Including
26 as a Net Settlement Amount. Subject to Court approval and the conditions specified in this Settlement
27 Agreement, and in consideration of the mutual covenants and promises set forth herein, the Parties agree
28 the Gross Settlement Amount shall include the following: (1) Enhancement Awards to the Named

Plaintiffs; (2) the PAGA Payment (including the PAGA LWDA Payment and the PAGA Employee Payment); (3) Settlement Administration Cost; (4) the Class Counsel Fee Award; (5) the Class Counsel Cost Award; and (6) the Net Settlement Amount.

72. Net Settlement Amount. After the deduction of the Court-approved amounts approved for the Enhancement Awards, the PAGA Payment (which includes the PAGA LWDA Payment and the PAGA Employee Payment), Settlement Administration Costs, the Class Counsel Fee Award, and Class Counsel Cost Award, the remainder shall be referred to as the Net Settlement Amount.

73. NSA Payable as Individual Settlement Payments Due to Qualified Class Members for the Release of Released Claims. The Net Settlement Amount shall be divided among Qualified Class Members on a pro-rata, workweek point-value basis and payable to Qualified Class Members as Individual Settlement Payments for the release of Released Claims.

73.a. Formula for Calculating Individual Settlement Payments Due to Qualified Class Members. Individual Settlement Payments payable to Qualified Class Members shall be calculated using following formula:

73.a.1. Crediting of 100 Points Per Workweek for Qualified Class Members' Caro/Leslie-Workweeks. Each Qualified Class Member's workweek count shall be credited with and shall consist of the sum of the total number of workweeks the Qualified Class Member worked during the *Caro* PAGA Period and/or the *Leslie* PAGA Period (i.e., each Qualified Class Member shall be credited with their respective *Caro/Leslie-Workweeks*) and each workweek credited as a *Caro/Leslie-Workweek* shall have a value of 100 points.

73.a.2. Crediting of 20 Points Per Workweek for Qualified Class Members' Song-Workweeks. If a Qualified Class Member is also a *Caro* Settlement Class Member, who was covered by the *Song* Class Action Lawsuit, then each such Qualified Class Member's workweek count shall also be credited with and shall also consist of the sum of the total number of workweeks the Qualified Class Member worked between August 1, 2016 and February 28, 2019 (i.e., each Qualified Class Member, who was covered by the *Song* Class Action Lawsuit, shall be credited with their respective *Song-Workweeks*) and each workweek credited as a *Song-Workweek* shall have a value of 20 points.

73.a.3. Calculation of Individual Qualified Class Members' Pro-Rata, Point-Value

Based Percentage Share of the NSA. Each Qualified Class Member's individualized workweek count point value shall be divided by the aggregate number of all Qualified Class Member's workweek counts and point value (i.e., the sum of points for all 100-point *Caro/Leslie*-Workweeks and 20-point *Song*-Workweeks combined) resulting in the Qualified Class Member's pro rata, workweek point-value based percentage share of the Net Settlement Amount.

73.a.4. Calculation of Individual Qualified Class Members' Pro-Rata, Point-Value Based Percentage as Pro-Rata Monetary Share of the NSA. Each Qualified Class Member's individualized pro rata, workweek point-value based percentage share of the Net Settlement Amount shall be multiplied by the value of the Net Settlement Amount, resulting in the Qualified Class Member's pro rata monetary share of the Net Settlement Amount, which shall be due and payable to the Qualified Class Member as an Individual Settlement Payment (Share of Net Settlement Amount = Each Qualified Class Member's total points per workweek ÷ All Qualified Class Members' total points per workweek × Net Settlement Amount).

73.b. Individual Settlement Payments Due to Qualified Class Members Characterized as 20% Wage Income and 80% Non-Wage Income. Individual Settlement Payments shall be characterized as follows: twenty percent (20%) as alleged unpaid wages and eighty percent (80%) as alleged penalties and unpaid interest. The Settlement Administrator shall issue an IRS Form W-2 to each Qualified Class Member for the portion of each Individual Settlement Payment allocated as alleged unpaid wages, which shall be subject to applicable tax withholdings. The Settlement Administrator shall issue an IRS Form 1099-MISC to each Qualified Class Member for the portion of each Individual Settlement Payment allocated as alleged unpaid non-wage penalties and interest, which shall not be subject to payroll tax withholdings.

74. PAGA Payment Payable to the LWDA and the PAGA Employees for the Release of PAGA Claims. The PAGA Payment of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) shall be allocated as a One Hundred Twelve Thousand, Five Hundred Dollars, and Zero Cent (\$112,500.00) PAGA LWDA Payment payable to the LWDA, representing 75% of the PAGA Payment, and a Thirty-Seven Thousand, Five Hundred Dollars, and Zero Cent (\$37,500.00) aggregate PAGA Employee Payment payable to the PAGA Employees, representing 25% of the PAGA Payment, for the releases of all PAGA

1 Claims.

2 75. PAGA Employee Payments Payable as Individual PAGA Employee Payments Due to
 3 PAGA Employees for the Release of PAGA Claims. The aggregate PAGA Employee Payment shall be
 4 divided among the PAGA Employees on a pro-rata basis and payable to PAGA Employees as Individual
 5 PAGA Employee Payments for the release of PAGA Claims. PAGA Employees shall release their PAGA
 6 Claims in their entirety and may not opt out of or object to the release of any PAGA Claims.

7 75.a. Formula for Calculating Individual PAGA Employee Payments Due to PAGA
 8 Employees. Individual PAGA Employee Payments payable to PAGA Employees shall be calculated using
 9 following formula:

10 75.a.1. Crediting of PAGA Employees' Pay Periods to Individual PAGA
 11 Employees. Each PAGA Employee's pay period count shall be credited with and shall consist of the sum
 12 of the total number of 14-day pay periods the PAGA Employee worked during the *Caro* PAGA Period
 13 and/or the *Leslie* PAGA Period.

14 75.a.2. Calculation of Individual PAGA Employee's Pay Periods as a Pro-Rata
 15 Percentage Share of the PAGA Employee Payment. The aggregate number of all PAGA Employees pay
 16 period counts shall be divided by each PAGA Employee's individualized pay period count, resulting in
 17 the PAGA Employee's pro rata percentage share of the PAGA Employee Payment.

18 75.a.3. Calculation of Individual PAGA Employee's Pro-Rata Percentage Share as
 19 Pro-Rata Monetary Share of the PAGA Employee Payment. Each PAGA Employee's individualized pro
 20 rata percentage share of the PAGA Employee Payment shall be multiplied by the value of the PAGA
 21 Employee Payment, resulting in the PAGA Employee's pro rata monetary share of the PAGA Employee
 22 Payment, which shall be due and payable to the PAGA Employee as an Individual PAGA Employee
 23 Payment.

24 75.b. Individual PAGA Employee Payments Due to PAGA Employees Characterized as
 25 Non-Wage Income. Individual PAGA Employee Payments shall be characterized entirely as alleged non-
 26 wage civil penalties. The Settlement Administrator shall issue an IRS Form 1099-MISC to each PAGA
 27 Employee for each Individual PAGA Employee Payment, which shall not be subject to payroll tax
 28 withholdings.

1 76. Settlement Class Member Workweek and Pay Period Disputes. The Parties agree that if
2 any Settlement Class Member disputes the basis for determining their share of the Settlement, then
3 Defendants' records shall presumptively control unless the Settlement Class Member can produce
4 documentary evidence of other workweeks or pay periods worked during the relevant time periods. The
5 Parties further agree that any dispute that cannot be resolved by Class Counsel and Defendants' Counsel
6 may be brought before the Court before final approval of the Class Settlement.

7 77. Individual Settlement Payment and Individual PAGA Payment Checks Void After 180
8 Days. Qualified Class Members and PAGA Employees must cash or deposit their Individual Settlement
9 Payment and PAGA Employee Payment checks within one hundred eighty (180) days after the date the
10 Settlement Administrator initially issues and disburses the checks via mail.

11 77.a. Reminder Postcards at 90 Days after Mailing of Individual Settlement Payment and
12 Individual PAGA Payment Checks. If any Individual Settlement Payment and PAGA Employee Payment
13 checks are not cashed or deposited within ninety (90) calendar days after the Settlement Administrator's
14 initial mailing, then the Settlement Administrator shall mail a reminder postcard indicating that unless the
15 check is cashed or deposited in the next ninety (90) days, then it shall expire and become non-negotiable,
16 and offer to replace the check if it was lost or misplaced.

17 77.b. Transfer of Void Individual Settlement Payment and Individual PAGA Payment
18 Checks to the Unclaimed Property Fund 200 Days After Initial Mailing. If any Individual Settlement
19 Payment and PAGA Employee Payment checks remain uncashed or not deposited by the expiration of the
20 ninety (90) day period after the Settlement Administrator's mailing the reminder notice (i.e., 180 days
21 after the after date the Settlement Administrator initially issues and disburses the checks via mail), then
22 the Settlement Administrator shall, within two hundred (200) calendar days after the checks were initially
23 mailed, cancel the uncashed or undeposited checks and shall deliver all funds associated with the uncashed
24 or undeposited Individual Settlement Payment checks and Individual PAGA Employee Payment checks
25 to the State of California's State Controller Unclaimed Property Fund with an identification of the amount
26 of unclaimed funds attributable to each Settlement Class Member and PAGA Employee.

27 78. Payments to Settlement Class Members Do Not Trigger Additional Benefits. All payments
28 disbursed to any Settlement Class Member under this Settlement (i.e., Individual Settlement Payments,

PAGA Employee Payments, and the Enhancement Awards) shall not qualify or be utilized to calculate any additional benefits under any benefit plans to which any Plaintiffs, Settlement Class Members and/or PAGA Employees may be eligible including, but not limited to: retirement plans, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, paid time off, sick leave plans, PTO plans, pension plans, or any other benefit plan. It is the Parties' intention that this Settlement shall not affect any rights, contributions, or amounts to which Plaintiffs, Settlement Class Members and PAGA Employees may be entitled under any benefit plans.

79. Class Counsel Fee Award Due to Class Counsel. A Class Counsel Fee Award in an amount of no less than Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) or one-third (1/3) of the Gross Settlement Amount, whichever is greater, shall be payable from the Gross Settlement Amount and due to Class Counsel as reasonable attorneys' fees for litigating and resolving the Action; if the Court finally approves a lesser amount, then the difference shall remain part of the Net Settlement Amount.

79.a. Defendants Shall Not Object to Class Counsel's Petition for a Class Counsel Fee Award. Class Counsel may petition the Court for a Class Counsel Fee Award, in an amount of no less than Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) or one-third (1/3) of the Gross Settlement Amount, whichever is greater, and Defendants shall not object to Class Counsel's application for attorneys' fees in such an amount. The Class Counsel Fee Award shall cover all work performed and all fees incurred to date and all work to be performed in the future in connection with this Settlement Agreement.

79.b. A Court Award of a Reduced Class Counsel Fee Award Shall Not Void the Settlement. If the Court awards an amount less than Eight Hundred Thousand Dollars and Zero Cents (\$800,000.00) or one-third (1/3) of the Gross Settlement Amount as a Class Counsel Fee Award, then the Court's award of a lesser amount shall not be sufficient grounds to void the Settlement. Class Counsel shall not be entitled to additional attorneys' fees from Defendants if Plaintiff or Class Counsel elect to appeal any reduction to any requested fee award.

79.c. Class Counsel Fee Award Due to Class Counsel Characterized as Non-Wage Income and Indemnification. The Class Counsel Fee Award shall be characterized as non-wage income. The Settlement Administrator shall issue an IRS Form 1099-MISC for all amounts paid as a Class Counsel

1 Fee Award. Class Counsel acknowledges and agrees that they are and shall be responsible for the payment
2 of any and all Federal, State, and local taxes or penalties associated with Class Counsel's receipt of a Class
3 Counsel Fee Award and agree to indemnify, defend, and hold the Released Parties harmless from any and
4 all claims by any Federal, State, or local taxing authority that Class Counsel failed to pay or underpaid
5 any taxes associated with the Class Counsel Fee Award paid under this Settlement.

6 80. Counsel Cost Award Due to Class Counsel. A Class Counsel Cost Award in an amount not
7 to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), shall be payable from the Gross
8 Settlement Amount and due to Class Counsel as reasonable costs and expenses incurred while litigating
9 and resolving the Action; if the Court finally approves a lesser amount, then the difference shall remain
10 part of the Net Settlement Amount.

11 80.a. Defendants Shall Not Object to Class Counsel's Petition for a Class Counsel Cost
12 Award. Class Counsel may petition the Court for a Class Counsel Cost Award in an amount not to exceed
13 Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), and Defendants shall not object to Class
14 Counsel's application for the reimbursement of costs and expenses in such an amount.

15 80.b. A Court Award of a Reduced Class Counsel Fee Award Shall Not Void the
16 Settlement. If the Court awards an amount less than Thirty-Five Thousand Dollars and Zero Cents
17 (\$35,000.00), then the Court's award of a lesser amount shall not be sufficient grounds to void the
18 Settlement. Class Counsel shall not be entitled to additional attorneys' fees from Defendants if Plaintiff
19 or Class Counsel elect to appeal any reduction to any requested cost award.

20 80.c. Class Counsel Cost Award Due to Class Counsel Characterized as Non-Wage
21 Income and Indemnification. The Class Counsel Cost Award shall be characterized as non-wage income.
22 The Settlement Administrator shall issue an IRS Form 1099-MISC for all amounts paid as a Class Counsel
23 Cost Award. Class Counsel acknowledges and agrees that they are and shall be responsible for the
24 payment of any and all Federal, State, and local taxes or penalties associated with Class Counsel's receipt
25 of a Class Counsel Cost Award and agree to indemnify, defend, and hold the Released Parties harmless
26 from any and all claims by any Federal, State, or local taxing authority that Class Counsel failed to pay or
27 underpaid any taxes associated with the Class Counsel Cost Award paid under this Settlement.

28 81. Enhancement Awards Due to Named Plaintiffs. Enhancement Awards in amounts not

1 exceeding Ten Thousand Dollars and Zero Cents (\$10,000.00) for each of the Named Plaintiffs (i.e.,
2 \$20,000.00 for both Named Plaintiffs), shall be payable from the Gross Settlement Amount and due to the
3 Named Plaintiffs in recognition of their services as class representatives; if the Court finally approves
4 lesser amounts, then the difference shall remain part of the Net Settlement Amount.

5 81.a. Defendants Shall Not Object to Class Counsel's Petition for Enhancement Awards.
6 Class Counsel may petition the Court for Enhancement Awards in amounts not exceeding Ten Thousand
7 Dollars and Zero Cents (\$10,000.00) for each of the Named Plaintiffs, and Defendants shall not object to
8 Class Counsel's application for Enhancement Awards in such amounts. The Parties agree Enhancement
9 Awards shall be payable to Named Plaintiffs in addition to any claimed Individual Settlement Payment or
10 PAGA Employee Payment to which Named Plaintiffs are entitled.

11 81.b. A Court Award of Reduced Enhancement Awards Shall Not Void the Settlement.
12 If the Court awards amounts less than Ten Thousand Dollars and Zero Cents (\$10,000.00) as Enhancement
13 Awards for either of the Named Plaintiffs, then the Court's award of a lesser amount shall not be sufficient
14 grounds to void the Settlement. Class Counsel shall not be entitled to additional attorneys' fees from
15 Defendants if they elect to appeal any reduction to any requested enhancement awards.

16 81.c. Enhancement Awards Due to Named Plaintiffs Characterized as Non-Wage
17 Income. Enhancement Awards shall be characterized as non-wage income. The Settlement Administrator
18 shall issue an IRS Form 1099-MISC for all amounts paid as Enhancement Awards to each of the Named
19 Plaintiffs. Named Plaintiffs acknowledge and agree that they are and shall be responsible for the payment
20 of any and all Federal, State, and local taxes or penalties associated with Named Plaintiffs' receipt of any
21 Enhancement Award and agree to indemnify, defend, and hold the Released Parties harmless from any
22 and all claims by any Federal, State, or local taxing authority that Named Plaintiffs failed to pay or
23 underpaid any taxes associated with the Enhancement Awards paid under this Settlement.

24 82. Settlement Administration Costs Due to the Settlement Administrator. Settlement
25 Administration Costs estimated not exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), shall
26 be payable and due to the Settlement Administrator for the Settlement Administrator's administration of
27 the notice and distribution process pursuant to this Settlement Agreement.

28 82.a. Settlement Administrator's Safety Protocols to Safeguard Private Employee

1 Information During Settlement Payment Disbursement Process. The Settlement Administrator shall
2 maintain acceptable electronic and physical security protocols to adequately protect and safeguard the
3 private employee information it will have access to as a result of the settlement payment disbursement
4 process.

5 82.b. Settlement Administrator's Tax Form Issuance and Reporting Duties During
6 Settlement Payment Disbursement Process. The Settlement Administrator shall be responsible for issuing
7 payments and withholding all required state and federal taxes in accordance with this Settlement
8 Agreement. The Settlement Administrator shall issue an IRS Form W-2 to each Qualified Class Member
9 for the portion of each Individual Settlement Payment allocated as alleged unpaid wages, which shall be
10 subject to applicable tax withholdings. The Settlement Administrator shall issue an IRS Form 1099-MISC
11 to each Qualified Class Member for the portion of each Individual Settlement Payment allocated as alleged
12 unpaid non-wage penalties and interest, which shall not be subject to payroll tax withholdings. The
13 Settlement Administrator shall also issue IRS Forms 1099 to: (1) Plaintiffs for their respective
14 Enhancement Awards; (2) the PAGA Employees for their shares of the PAGA Employee Payment; and
15 (3) Class Counsel for the amount paid for the Class Counsel Fee Award and the Class Counsel Cost
16 Award. The Settlement Administrator shall be responsible for preparing these forms correctly. The
17 Settlement Administrator shall also be responsible for submitting Defendants' share of payroll taxes to
18 the appropriate government agencies on behalf of Defendants. Plaintiffs and Class Counsel shall be
19 responsible for correctly characterizing any monies received under this Settlement Agreement for tax
20 purposes and for paying any taxes on the amounts received.

21 83. Indemnification. Plaintiffs and Settlement Class Counsel acknowledge and agree that they
22 are and will be responsible for the payment of any and all Federal, State, and Local taxes or penalties
23 associated with their respective allocated portions of the payments described herein, and agree to
24 indemnify, defend, and hold the Released Parties harmless from any and all claims by any Federal, State,
25 or Local taxing authority that Plaintiffs or Settlement Class Counsel failed to pay or underpaid their or her
26 or his share of taxes associated with the payments set forth in this Settlement. The Parties acknowledge
27 and agree that Settlement Class Counsel is not responsible for the payment of any Federal, State, and
28 Local taxes or penalties associated with payments to Plaintiffs and Settlement Class Members.

1 **VI. NOTICE TO THE SETTLEMENT CLASSES**

2 84. Defendants' Provision of the Class Member List to the Settlement Administrator 45 Days
3 After Preliminary Approval. Within forty-five (45) calendar days of the date of the Court's entry of a
4 Preliminary Approval Order, Defendants shall provide to the Settlement Administrator a database
5 containing the following information ("Class Member List"): (a) the full name, last known address, last
6 known telephone number, and full social security number of all Settlement Class Members; and (b) the
7 information necessary to determine the estimated settlement allocation to each Settlement Class Member,
8 including without limitation, the total number of *Caro/Leslie*-Workweeks worked, and the total number
9 of *Song*-Workweeks worked, if any, by each Settlement Class Member, and the total number of pay
10 periods worked by each PAGA Employee within the relevant Settlement Class Periods and PAGA
11 Periods.

12 85. Settlement Administrator's Safety Protocols and Duties to Report Unauthorized Access to
13 Settlement Class Members' Personally Identifiable Information ("PII"). The Settlement Administrator
14 (along with any of its agents) shall represent and warrant that it will: (1) provide reasonable and
15 appropriate administrative, physical and technical safeguards, including a reasonable security protocol,
16 for any personally identifiable information ("PII"), which it receives from Defendants' Counsel and/or
17 Class Counsel; (2) not disclose the PII to third parties, including agents or subcontractors, without
18 Defendants' consent; (3) not disclose or otherwise use the PII other than to carry out its duties as set forth
19 herein; and (4) promptly provide Defendants with notice if PII is subject to unauthorized access, use,
20 disclosure, modification, or destruction. The Settlement Administrator may provide notice to all Parties if
21 the PII is subject to unauthorized access, use, disclosure, modification or destruction; however, all
22 additional communications from the Settlement Administrator regarding the scope, circumstances, and
23 substance shall be communicated solely to Defendants.

24 86. Settlement Administrator's Class Notice Mailing Within 14 Days of Class Member List
25 Receipt, Re-Mailing of Undelivered Class Notices, and Declaration in Advance of Plaintiffs' Motion for
26 Final Approval. The Settlement Administrator shall mail the Class Notice to each Settlement Class
27 Member by first-class mail within fourteen (14) calendar days of receipt of the Class Member List. Prior
28 to mailing the Class Notice, the Settlement Administrator shall update the addresses of the Class Members

1 by reference to the National Change of Address Database maintained by the United States Postal Service.
2 If a Class Notice is returned as undelivered but with a forwarding address, then the Settlement
3 Administrator mail the Class Notice to the forwarding address. If a Class Notice is returned as undelivered
4 with no forwarding address, then the Settlement Administrator shall conduct an advanced skip trace to
5 locate the most current address of the person to whom the Class Notice was addressed, and shall mail the
6 Class Notice to any updated address within five (5) calendar days. Upon completion of these steps, the
7 Parties shall be deemed to have satisfied their obligations to provide the Class Notice to the affected
8 Settlement Class Members. The Settlement Administrator shall provide to the Court, concurrently with
9 Plaintiff's Motion for Final Approval, a declaration of due diligence and proof of mailing with regard to
10 the mailing of the Class Notice.

11 87. Settlement Administrator's Additional Settlement Administration Duties. In addition to the
12 express and implied duties set forth herein, the Settlement Administrator shall also be responsible for: (a)
13 mailing the Class Notice as directed by the Court; (b) consulting with counsel for the Parties concerning
14 any relevant issue, including (without limitation) the estimated amounts of approximate Individual
15 Settlement Payments, PAGA Employee Payments, and the acceptance of any late or deficient requests for
16 exclusion or objections to the Settlement; (c) keeping track of and maintaining records of the submission
17 of timely and valid requests for exclusion and objections; (d) calculating the Individual Settlement
18 Payments, Individual PAGA Employee Payments, and all other payments made pursuant to the
19 Settlement; (e) providing weekly status reports to counsel for the Parties, including: (i) the number of
20 Class Notices mailed (including information regarding undelivered and/or emailed Class Notices); (ii) the
21 number of Workweek or Pay Period disputes received (and sending copies of said disputes); (iii) the
22 number of objections received; and (iv) the number of requests for exclusion received; (f) notifying
23 Defendants' Counsel of the wiring instructions to fund the Gross Settlement Amount as approved by the
24 Court; (g) preparing the checks containing the Individual Settlement Payments; (h) distributing and paying
25 the Enhancement Awards, Individual Settlement Payments, PAGA Employee Payments, the PAGA
26 LWDA Payment, the Class Counsel Fee Award, and the Class Counsel Cost Award to the applicable
27 recipients; (i) issuing tax forms for all payments under the Settlement including tax forms addressing
28 employer and employee-side payroll taxes; and (j) for such other tasks common to settlement

administration as the Parties mutually agree or the Court orders the Settlement Administrator to perform, including responding to questions from Settlement Class Members.

VII. REQUESTS FOR EXCLUSION FROM THE SETTLEMENT

88. Settlement Class Members' Timely and Valid Requests for Exclusion Postmarked Within 45 Days of Class Notice Mailing. Each Settlement Class Member shall have forty-five (45) calendar days from the mailing of the Class Notice, or such number of days as the Court shall specify, within which to timely postmark a written request for exclusion, for return to the Settlement Administrator. To be valid, the written request for exclusion must: (1) state the Settlement Class Member's name, address, telephone number, and social security number or employee identification number; (2) state the Settlement Class Member's intention to exclude themselves from or opt-out of the Settlement (*e.g.* "I want to exclude myself from this settlement. I also understand that I retain all rights to sue the Defendants for the claims asserted in this lawsuit."); (3) be addressed to the Settlement Administrator; (4) be signed by the Settlement Class Member or their or his or her lawful representative; and (5) be postmarked no later than forty-five (45) calendar days from the mailing of the Class Notice. No requests for exclusion shall be deemed timely or valid if postmarked after the forty-five (45) calendar day period for the submission of requests for exclusion (except for those subject to the fifteen (15) day extension referenced below for eligible Settlement Class Members).

88.a. Extension of 15 days to Submit Timely and Valid Requests for Exclusion for Affected Settlement Class Members. Settlement Class Members whose Class Notices are returned as undelivered and who are sent a re-mailed Class Notice shall be given an extension of fifteen (15) calendar days from their original deadline to postmark a request for exclusion. Settlement Class Members shall be responsible for maintaining a photocopy or other records of their request for exclusion, reflecting that it was submitted in a timely and valid manner. Any disputes regarding the timeliness of a request for exclusion or whether a written communication constitutes a timely and valid request for exclusion that cannot be resolved between the Parties shall be determined by the Court, whose determination shall be final.

88.b. Settlement Class Members who Submit Timely and Valid Requests for Exclusion Extension Shall Not be Bound to the Settlement and Shall Not be Entitled to Object to the Settlement.

Any Settlement Class Member who timely and validly excludes himself/herself/themselves from this Settlement shall not be bound by this Settlement Agreement, except as to the PAGA Employees who shall release their PAGA Claims in their entirety and may not opt out of or object to the PAGA release, and any Settlement Class Member who validly excludes himself/herself/themselves shall not be entitled to any portion of the Net Settlement Amount. Any Settlement Class Member who submits a timely and valid request for exclusion shall waive any rights to object to the Settlement.

88.c. Defendants' Option to Rescind and Void Settlement if 10% or More Settlement Class Members Submit Timely and Valid Requests for Exclusion. If ten percent (10%) or more of the Settlement Class Members opt out of the Settlement by submitting valid and timely requests for exclusion, then Defendants shall have the sole and absolute discretion to rescind/void the Settlement Agreement within fifteen (15) calendar days after receiving from the Settlement Administrator the final list of requests for exclusion. Defendants agree to meet and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement. If Defendants elect to rescind/void the Settlement Agreement, then Defendants shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of the Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement shall become null and void and have no further force or effect. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means. If Defendants rescind the settlement, then Defendants shall be solely responsible for any fees and costs incurred by the Settlement Administrator.

VIII. OBJECTIONS TO THE SETTLEMENT

89. Objecting Class Members' Timely and Valid Objections Postmarked Within 45 Days of Class Notice Mailing. Each Settlement Class Member shall have forty-five (45) calendar days from the mailing of the Class Notice, or such number of days as the Court shall specify, within which to timely postmark an objection, for return to the Settlement Administrator. Any Settlement Class Member, who does not affirmatively opt-out of the Settlement by submitting a valid and timely request for exclusion, may object to the approval of class action settlement ("Objecting Class Member"). To be valid, the written objection must: (1) state the Objecting Class Member's name, address, telephone number, and social security number or employee identification number; (2) describe, in clear and concise terms, the legal and

1 factual arguments supporting the objection; (3) list identifying witness(es) the objector may call to testify
2 at the Final Approval Hearing; (4) provide true and correct copies of any exhibit(s) the objector intends to
3 offer at the Final Approval Hearing; (5) state whether the objection applies only to the objector, to a
4 specific subset of the Settlement Classes, or to the entirety of the Settlement Classes; (6) be addressed to
5 the Settlement Administrator; (7) be signed by the Objecting Class Member or their or his or her lawful
6 representative; and (8) be postmarked no later than forty-five (45) calendar days from the mailing of the
7 Class Notice. No objections shall be deemed timely or valid if postmarked after the forty-five (45) calendar
8 day period for the submission of objections (except for those subject to the fifteen (15) day extension
9 referenced below for eligible Settlement Class Members).

10 89.a. Extension of 15 days to Submit Timely and Valid Objections for Affected
11 Settlement Class Members. Settlement Class Members whose Class Notices are returned as undelivered
12 and who are sent a re-mailed Class Notice shall be given an extension of fifteen (15) calendar days from
13 their original deadline to postmark an objection. Settlement Class Members shall be responsible for
14 maintaining a photocopy or other records of their objection, reflecting that it was submitted in a timely
15 and valid manner. Any disputes regarding the timeliness of an objection or whether a written
16 communication constitutes a timely and valid objection that cannot be resolved between the Parties shall
17 be determined by the Court, whose determination shall be final.

18 89.b. Objecting Class Members who Submit Timely and Valid Objections may be Bound
19 to the Settlement. Any Settlement Class Member who timely and validly objects to the Settlement shall,
20 nevertheless, be bound to Settlement including the release of the Released Claims if the Court overrules
21 the objection. Regardless of whether a Settlement Class Member submitted a timely and valid written
22 objection, any Settlement Class Member who wishes to appear at the Final Approval Hearing and to be
23 heard orally in support of, or in opposition to the Settlement, may do so. Settlement Class Members shall
24 have no right to object to the PAGA release or PAGA Payment.

25 89.c. No Encouragement of Settlement Class Member Objections or Obstruction of
26 Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
27 Settlement Class Members to submit written objections to the Settlement or to appeal from the Court's
28 Final Approval Order or Final Judgment. Class Counsel shall not represent any Settlement Class Members

with respect to any such objections to this Settlement. Counsel for the Parties shall file any response to the objections submitted by Objecting Class Members, if any, at least seven (7) calendar days before the date of the Final Approval Hearing.

IX. RELEASE OF CLAIMS BY NAMED PLAINTIFFS, QUALIFIED CLASS MEMBERS, AND PAGA EMPLOYEES

90. Qualified Class Members' Releases of Released Claims. On the date the Gross Settlement Amount is funded, Qualified Class Members including Plaintiffs shall release all claims pleaded in the Operative Complaint, attached hereto as **Exhibit A**, and which could have been alleged based upon the facts, allegations and/or claims pleaded in the Operative Complaint, against the Released Parties, for work performed during the *Caro* Class Period and *Leslie* Class Period, including the following:

90.a. The Released Claims. The "Released Claims" shall include the claims alleged in the Lawsuits and set forth in the Operative Complaint, specifically, (1) Failure to pay minimum and regular rate wages; (2) Failure to pay overtime compensation; (3) Failure to provide meal periods or provide premiums in lieu thereof; (4) Failure to provide rest periods or provide premiums in lieu thereof; (5) Failure to pay timely wages at termination; (6) Failure to provide accurate itemized wage statements; (7) Violation of Business and Professions Code § 17200, *et seq.*; (8) Failure to reimburse for necessary business expenses; (9) Failure to pay wages due as agreed upon under statute or contract; and (10) Violation of the California Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*), and those claims predicated on the same or similar facts and/or claims alleged in the Lawsuits and/or any PAGA letter sent to the LWDA by Named Plaintiffs in or prior to the Lawsuits, as well as any claims that could have been pled which arise from the same or similar facts concerning the Named Plaintiffs or the putative class, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders (specifically for violations of Labor Code sections 201, 201.3, 201.5, 201.6, 201.9, 202, 202, 203, 204, 204.1, 204.2, 205.5, 206.5, 210, 221, 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 245, 245.8, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197 *et seq.*, 1197.1, 1198, 1199, 2699, 2802, and applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11000 *et seq.*; or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the

1 Lawsuits; any claims for injunctive relief, declaratory relief, restitution, alleged or which could have been
2 alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the Lawsuits;
3 and any and all other claims under California common law, the federal law, and the California Business
4 and Professions Code alleged in or that could have been alleged under the same or similar facts, allegations
5 and/or claims pleaded in the Lawsuits and based on the alleged Labor Code violations.

6 90.b. The Released Claims Shall Not Include Claims Previously Settled and Released in
7 the Song Class Action Lawsuit. The Released Claims shall not include the claims previously released by
8 Settlement Class Members who are also members of the previously settled and adjudged *Song* Class
9 Action Lawsuit for the period between August 1, 2016 and February 28, 2019. Accordingly, claims of the
10 members of the class in the *Song* Class Action Lawsuit pertaining to (a) failure to pay minimum wage and
11 overtime wages, (b) derivative wage statement penalties, (c) derivative waiting time penalties, and (d)
12 PAGA penalties for the period between August 1, 2016 and February 28, 2019, which have already been
13 released as a result of the *Song* Class Action Lawsuit, shall not be included in Qualified Class Members'
14 release of Released Claims in this Action.

15 90.c. The Released Claims Shall Not Include Claims Previously Settled and Released in
16 the Kirby Class Action Lawsuit. The Released Claims shall not include the claims previously released by
17 Settlement Class Members who are also members of the previously settled and adjudged *Kirby* Class
18 Action Lawsuit for the period between August 1, 2016 and January 11, 2021. Accordingly, claims of the
19 members of the class in the *Kirby* Class Action Lawsuit pertaining to (a) failure to pay minimum and
20 overtime wages, (b) failure to provide compliant meal and rest periods, (c) failure to reimburse business
21 expenses, (d) derivative waiting time penalties, (e) derivative wage statement penalties, and (f) PAGA
22 penalties between August 1, 2016 and January 11, 2021, which have already been released as a result of
23 the *Kirby* Class Action Lawsuit, shall not be included in Qualified Class Members' release of Released
24 Claims in this Action.

25 91. PAGA Employees' Release of PAGA Claims. On the date the Gross Settlement Amount
26 is funded, PAGA Employees including Plaintiffs shall release hereby do and shall be deemed to have
27 fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the
28 Released Parties of and from any and all claims for violation of the California Private Attorneys General

1 Act of 2004 (Labor Code § 2698 *et seq.*), (“PAGA Claims”) as alleged in the Operative Complaint,
2 attached hereto as **Exhibit A**, which includes those alleged in the PAGA letter(s) sent to the LWDA by
3 Named Plaintiffs that arose at any time during the *Caro* PAGA Period and/or *Leslie* PAGA Period. The
4 PAGA Employees shall be issued a check for their share of the PAGA Payment and shall not have the
5 opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims set forth in
6 this Paragraph. The PAGA Employees shall, furthermore, be bound by the release of the PAGA Claims
7 regardless of whether they cash or deposit their PAGA Employee Payment.

8 92. Named Plaintiffs’ Further Releases of Claims and Waiver of Section 1542 Protections. In
9 addition to Named Plaintiffs’ releases of the Released Claims, and except for any claims or causes of
10 action against Defendants arising from obligations arising from the execution of this Settlement
11 Agreement, Named Plaintiffs further release claims against Defendants up to the time Named Plaintiffs
12 execute this Settlement Agreement including, without limitation, any and all claims whatsoever regarding
13 Named Plaintiffs’ respective employment and/or the termination of employment including, but not limited
14 to, any claims for wages, bonuses, severance pay, vacation pay, penalties, employment benefits, stock
15 options, violation of any personnel policy, any claims based on discrimination, harassment, unlawful
16 retaliation, violation of public policy, or damages of any kind whatsoever, arising out of any common law
17 torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of wrongful
18 discharge, any theory of negligence, any theory of retaliation, any legal restriction on any Defendants’
19 right to terminate the employment relationship, or any federal, state, or other governmental statute,
20 executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest
21 extent provided by law. Named Plaintiffs shall be deemed to have up to the time Named Plaintiffs execute
22 this Settlement Agreement, and by operation of Final Judgment shall have, expressly waived and
23 relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of
24 the California Civil Code, or any other similar provision under federal or state law that purports to limit
25 the scope of a general release. Named Plaintiffs, for themselves, have read Section 1542 of the Civil Code
26 of the State of California, which provides:

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
28 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**

1 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
2 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
3 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
4 **PARTY.**

5 Named Plaintiffs understand that Section 1542 gives the right not to release existing claims of which they
6 are not now aware, unless Named Plaintiffs voluntarily choose to waive this right. Having been so
7 apprised, Named Plaintiffs nevertheless voluntarily waive the rights described in Section 1542, and elect
8 to assume all risks for claims that now exist in their favor, known or unknown. The release of the claims
9 of Named Plaintiffs as set forth in this Paragraph is a condition precedent to enforcement of this MOU
10 and the Settlement Agreement.

11 **X. DUTIES OF THE PARTIES PRIOR TO THE PRELIMINARY APPROVAL/CLASS**
12 **CERTIFICATION**

13 93. Parties' Agreement to Class Certification for Settlement Purposes Only. For settlement
14 purposes only, the Parties agree that the Settlement Classes as defined in Paragraph 49, which shall end
15 on date the Court enters a Preliminary Approval Order, or to an earlier date at Defendants' option, may
16 be certified in the Action. The Parties agree they shall not seek any "certification" of any group of persons
17 for the release of any PAGA Claims. Accordingly, Named Plaintiffs shall request that the Court certify
18 for settlement purposes the Settlement Classes for the purposes of the release of Released Claims, which
19 Defendants shall not oppose or object to.

20 94. Class Counsel Shall Promptly Submit this Settlement Agreement in Conjunction with a
21 Motion for Preliminary Approval. Class Counsel shall promptly submit this Settlement Agreement to the
22 Court in support of Named Plaintiffs' motion for preliminary approval and for determination by the Court
23 as to whether the proposed Settlement is within the range of possible judicial approval, which shall include
24 a request that the Court enter a Preliminary Approval Order substantially in the form attached hereto as
25 **Exhibit 2**, which shall include Named Plaintiffs' requests that the Court: (a) schedule a Final Approval
26 Hearing on the question of whether the proposed Settlement, including payment of the Class Counsel Fee
27 Award, the Class Counsel Cost Award, and the Enhancement Awards should be finally approved as fair,
28 reasonable, and adequate as to the Settlement Class Members and for final approval of the PAGA

1 Payment; (c) certify the Settlement Classes for settlement purposes; (d) approve the Class Notice attached
2 hereto as **Exhibit 1**; (e) direct the mailing of the Class Notice by first-class mail to the Settlement Class
3 Members and PAGA Employees; and (f) preliminarily approve the Settlement subject only to the
4 objections of the Settlement Class Members and final review by the Court.

5 95. Confidentiality Prior to Plaintiffs' Filing of a Motion for Preliminary Approval. Named
6 Plaintiffs and Class Counsel shall not make any public disclosure of the Settlement until after the filing of
7 the motion for preliminary approval of the Settlement. Named Plaintiffs and their counsel represent that
8 they have not made any such disclosure. Named Plaintiffs, Defendants, Defendants' Counsel and Classes
9 Counsel shall not encourage members of the Settlement Class to opt-out. Class Counsel will take all steps
10 necessary to ensure that Named Plaintiffs are aware of, and will encourage them to adhere to, the
11 restriction against any public disclosure of the Settlement until after the Settlement is preliminarily
12 approved by the Court. Thereafter, Class Counsel and Plaintiffs agree not to publicize the terms of this
13 Settlement with the media, including but not limited to, any newspaper, journal, magazine, website and/or
14 online reporter of settlements or on any website.

15 **XI. DUTIES OF THE PARTIES PRIOR TO AND FOLLOWING THE FINAL APPROVAL**
16 **HEARING**

17 96. Class Counsel Shall File a Motion for Final Approval in Advance of the Final Approval
18 Hearing. At least 16 court days, or on the date set by the Court, prior to the Final Approval Hearing, Class
19 Counsel shall file Named Plaintiffs' motion for final approval seeking, among other things, entry of a
20 Final Approval Order, substantially in the form attached as **Exhibit 3**, finally certifying the Settlement
21 Classes for settlement purposes only, ordering Defendants to remit the Gross Settlement Amount to the
22 Settlement Administrator, approving and ordering the Settlement Administrator to distribute the amounts
23 payable pursuant to the Settlement, and setting a date for the Court's review of the Settlement fund
24 distribution.

25 97. Final Judgment. At the time Plaintiffs move for final approval of the Settlement, Plaintiffs
26 shall also move the Court to enter a Final Judgment, substantially in the form attached as **Exhibit 4**, which
27 shall, among other things, finally adjudge this Action and include a provision for the retention of the
28 Court's jurisdiction over the Parties including the Class to enforce the terms of the judgment.

1 98. Effect of Settlement Not Being Final Including Rights to Terminate or Void Settlement
2 Agreement. Subject to the obligations of mutual full cooperation set forth herein, either Named Plaintiffs
3 or Defendants may terminate this Settlement if after submitting the Settlement for approval to the Court,
4 the Court (1) declines to enter a preliminary approval order with prejudice or substantially the form
5 submitted by the Parties; (2) declines to enter a final approval order with prejudice or substantially the
6 form submitted by the Parties; (3) declines to enter a final judgment with prejudice or substantially the
7 form submitted by the Parties; or (4) if the Settlement Agreement as agreed upon does not become final
8 because of appellate court action.

9 98.a. Notice of Termination or Voiding of Settlement Within 14 Days. The terminating
10 Party shall give to the other Party (through counsel) written notice of its decision to terminate no later than
11 fourteen (14) calendar days after receiving notice that one of the four enumerated events causing the
12 Settlement to not become final has occurred.

13 98.b. Effects of Termination or Voiding of Settlement. Termination of the Settlement
14 Agreement shall have the following effects: (a) the Settlement Agreement shall be terminated and shall
15 have no force or effect, and no Party shall be bound by any of its terms; (b) if the Settlement Agreement
16 is terminated, then Defendants shall have no obligation to make any payments to any party, Settlement
17 Class Member, PAGA Employee or attorney; (c) if there are any fees incurred by the Settlement
18 Administrator and the Settlement is terminated by Defendants, then Defendants shall solely be responsible
19 for any costs and fees incurred by the Settlement Administrator; (d) the preliminary approval order, final
20 approval order, and final judgment shall be vacated; (e) the Settlement Agreement and all negotiations,
21 statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties,
22 all of whom shall be restored to their respective positions prior to the Settlement; (f) except as otherwise
23 discoverable, neither this Settlement Agreement nor any ancillary documents, actions, statements or
24 filings in furtherance of settlement (including all matters associated with the mediation) shall be
25 admissible or offered into evidence in the Lawsuits or any other action for any purpose whatsoever, except
26 that Plaintiffs may reveal information that Defendants may have marked as confidential under the
27 mediation privilege including the data, documents, and sampling exchanged for mediation purposes for
28 the purpose of presenting the Court with information supporting the fairness, reasonableness or adequacy

1 of the Settlement.

2 **XII. ADDITIONAL SETTLEMENT PROVISIONS**

3 99. Continuing Jurisdiction of the Court. Following entry of Final Judgment, the Court shall
4 retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this
5 Settlement Agreement and all orders and directives entered in connection therewith. Parties and Parties'
6 Counsel shall submit to the jurisdiction of the Court for purposes of interpreting, implementing and
7 enforcing this Settlement Agreement and all orders and directives entered in connection therewith.

8 100. Parties' Authority. The signatories hereto hereby represent that they are fully authorized to
9 enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions thereof.

10 101. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
11 accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such
12 documents and taking of such action as reasonably may be necessary to implement the terms of this
13 Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all
14 efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by
15 order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein.
16 As soon as practicable after execution of this Settlement Agreement, Class Counsel shall take all necessary
17 steps to secure the Court's final approval of this Settlement Agreement. The Parties and their respective
18 counsel agree that they will not attempt to encourage or discourage Settlement Class Members from filing
19 requests for exclusion.

20 102. No Prior Assignments. The Parties and their respective counsel represent, covenant and
21 warrant that they have not, directly or indirectly, assigned, transferred, encumbered or purported to assign,
22 transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
23 action or right herein released and discharged except as set forth herein.

24 103. No Admissions. Nothing contained herein, nor the consummation of this Settlement
25 Agreement, is to be construed or deemed an admission of liability, culpability, negligence or wrongdoing
26 on the part of any of the Parties. Each of the Parties hereto has entered into this Settlement Agreement
27 solely with the intention to avoid further disputes and litigation with the attendant inconvenience and
28 expenses.

104. Breach and Enforcement Actions. The Parties shall jointly request that the Court retain jurisdiction pursuant to California Code of Civil Procedure § 664.6 to oversee and enforce the terms of this Settlement. In the event of a breach of this Settlement, the nonbreaching Party shall provide notice to the breaching party and request that the breaching party cure any alleged breach. If the breach is not cured within thirty (30) days of said notice, the nonbreaching party may pursue legal action or other proceeding against any other breaching party or parties to enforce the provisions of this Settlement Agreement or to declare rights or obligations under this Settlement Agreement. In the event of such enforcement actions, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions. All such disputes shall be resolved by the Court.

105. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing both electronically and by United States registered or certified mail, return receipt requested, and addressed as follows:

105.a. Notices to Plaintiffs, the Settlement Classes, and Class Counsel. Notices to Plaintiffs, the Settlement Classes, and Class Counsel shall be sufficient if provided to:

Kane Moon (kane.moon@moonyanglaw.com)
 Roy K. Suh (roy.suh@moonyanglaw.com)
 Lilit Ter-Astvatsatryan (lilit@moonyanglaw.com)
 MOON & YANG, APC
 1055 West Seventh Street, Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125

105.b. Notices to Defendants and Defendants' Counsel. Notices to Defendants and Defendants' Counsel shall be sufficient if provided to:

Elizabeth Staggs Wilson (estaggs-wilson@littler.com)
 Jyoti Mittal (jmittal@littler.com)
 James Payer (jpayer@littler.com)
 LITTLER MENDELSON, P.C.
 633 West Fifth Street, 63rd Floor
 Los Angeles, California 90071
 Telephone: (213) 443-4300
 Facsimile: (213) 443-4299

1 106. Construction. The Parties hereto agree that the terms and conditions of this Settlement
2 Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties, and this
3 Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to
4 which any Party or their counsel participated in the drafting of this Settlement Agreement.

5 107. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as
6 a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this
7 Settlement Agreement or any provision of it. Each term of this Settlement Agreement is contractual and
8 not merely a recital.

9 108. Modification. This Settlement Agreement may not be changed, altered or modified, except
10 in writing and signed by the Parties hereto and approved by the Court. This Settlement Agreement may
11 not be discharged except by performance in accordance with its terms or by a writing signed by the Parties
12 hereto.

13 109. Integration Clause. This Settlement Agreement, and the Exhibits attached hereto and
14 incorporated herein by reference, contain the entire agreement between the Parties relating to the
15 settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
16 understandings, representations and statements, whether oral or written and whether by a Party or such
17 Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

18 110. Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the
19 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and
20 assigns.

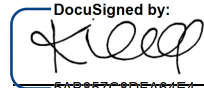
21 111. Class Member Signatories. It is agreed that because the Class Members are so numerous,
22 it is impossible or impractical to have each member execute this Settlement Agreement. The Class Notice,
23 substantially in the form attached as Exhibit 1 hereto, shall advise the Settlement Class Members of the
24 binding nature of the release, and the release shall have the same force and effect as if this Settlement
25 Agreement were executed by each Settlement Class Member.

26 112. Counterparts. This Settlement Agreement may be executed in counterparts and by
27 facsimile signatures, and when each party has signed and delivered at least one such counterpart, each
28 counterpart shall be deemed an original and, when taken together with other signed counterparts, shall

1 constitute one Settlement Agreement binding upon and effective as to all Parties.

2 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint
3 Settlement Agreement and Release between Plaintiff and Defendants as of the date(s) set forth below:

4
5 Dated: 3/16/2023

DocuSigned by:

3AB857C6DFA64E4...

KIMBERLY CARO
Plaintiff and Class Representative

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8 Dated: _____

BRENDA LESLIE
Plaintiff and Class Representative

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10
11 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KINDRED HEALTHCARE OPERATING, LLC

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14 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
THC-ORANGE COUNTY, LLC

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16
17 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KND DEVELOPMENT 53, LLC

18
19
20 **APPROVED AS TO FORM AND CONTENT:**

21
22 Dated: 03/16/23



KANE MOON
ROY K. SUH
Attorneys for Plaintiffs and Class Counsel, MOON
& YANG, APC

23
24
25
26 Dated: _____

ELIZABETH STAGGS-WILSON
Counsel for Defendants, LITTLER MENDELSON,
P.C.

27
28 4856-8566-6645.2 / 115599-1005

1 constitute one Settlement Agreement binding upon and effective as to all Parties.

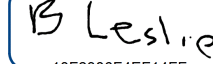
2 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint
3 Settlement Agreement and Release between Plaintiff and Defendants as of the date(s) set forth below:

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5 Dated: _____

KIMBERLY CARO
Plaintiff and Class Representative

6
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8 Dated: 3/15/2023 _____

DocuSigned by:

 _____

BREND A LESLIE
Plaintiff and Class Representative

9
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11 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KINDRED HEALTHCARE OPERATING, LLC

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14 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
THC-ORANGE COUNTY, LLC

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17 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KND DEVELOPMENT 53, LLC

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20 **APPROVED AS TO FORM AND CONTENT:**

21
22 Dated: 03/15/23 _____

 _____

KANE MOON
ROY K. SUH
Attorneys for Plaintiffs and Class Counsel, MOON
& YANG, APC

23
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25
26 Dated: _____

ELIZABETH STAGGS-WILSON
Counsel for Defendants, LITTLER MENDELSON,
P.C.

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28 4856-8566-6645.2 / 115599-1005

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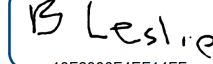
2 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint
3 Settlement Agreement and Release between Plaintiff and Defendants as of the date(s) set forth below:

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5 Dated: _____

KIMBERLY CARO
Plaintiff and Class Representative

6
7
8 Dated: 3/15/2023 _____

DocuSigned by:

 _____

BRENDA LESLIE
Plaintiff and Class Representative

9
10
11 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KINDRED HEALTHCARE OPERATING, LLC

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14 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
THC-ORANGE COUNTY, LLC

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17 Dated: _____

KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KND DEVELOPMENT 53, LLC

18
19
20 **APPROVED AS TO FORM AND CONTENT:**

21
22 Dated: 03/15/23 _____

 _____

KANE MOON
ROY K. SUH
Attorneys for Plaintiffs and Class Counsel, MOON
& YANG, APC

23
24
25
26 Dated: _____

ELIZABETH STAGGS-WILSON
Counsel for Defendants, LITTLER MENDELSON,
P.C.

27
28 4856-8566-6645.2 / 115599-1005

1 constitute one Settlement Agreement binding upon and effective as to all Parties.

2 IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint
3 Settlement Agreement and Release between Plaintiff and Defendants as of the date(s) set forth below:

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KIMBERLY CARO
Plaintiff and Class Representative

8 Dated: _____

BRENDA LESLIE
Plaintiff and Class Representative

11 Dated: _____

DocuSigned by:
Kathy Teague
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KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KINDRED HEALTHCARE OPERATING, LLC

14 Dated: _____

DocuSigned by:
Kathy Teague
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KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
THC-ORANGE COUNTY, LLC

17 Dated: _____

DocuSigned by:
Kathy Teague
6B07D11F401C4AE...
KATHY TEAGUE
Vice President and Corporate Secretary, Defendant
KND DEVELOPMENT 53, LLC

20 **APPROVED AS TO FORM AND CONTENT:**

22 Dated: _____

KANE MOON
ROY K. SUH
Attorneys for Plaintiffs and Class Counsel, MOON
& YANG, APC

26 Dated: 3/15/2023

ELIZABETH STAGGS-WILSON
Counsel for Defendants, LITTLER MENDELSON,
P.C.

4856-8566-6645.2 / 115599-1005

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EXHIBIT A
(Draft Fourth Amended
Complaint)

Kane Moon (Cal. SBN 249834)
 Roy K. Suh (Cal. SBN 283988)
 Lilit Ter-Astvatsatryan (Cal. SBN 320389)
MOON & YANG, APC
 1055 W. Seventh St., Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 Facsimile: (213) 232-3125

Attorneys for Plaintiffs KIMBERLY CARO and
 BRENDA LESLIE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO – CENTRAL JUSTICE CENTER**

KIMBERLY CARO, individually, and on behalf of
 all others similarly situated, and BRENDA
 LESLIE, individually, and on behalf of all others
 similarly situated,

Plaintiffs,

v.

KINDRED HEALTHCARE OPERATING, LLC,
 a Delaware corporation; THC – ORANGE
 COUNTY, LLC, a limited liability company; KND
 DEVELOPMENT 53, LLC, a limited liability
 company; and DOES 1 through 10, inclusive,

Case No.: CIVDS2022513

*Assigned for all purposes to the Honorable David
 S. Cohn, Department S-26*

**FOURTH AMENDED CLASS ACTION AND
 REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay Minimum and Regular Rate Wages (Lab. Code §§ 204, 1194, 1194.2 and 1197);
2. Failure to Pay Overtime Compensation (Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7 and 512);
4. Failure to Authorize and Permit Rest Breaks (Lab. Code § 226.7);
5. Failure to Indemnify Necessary Business Expenses (Lab. Code § 2802);
6. Failure to Timely Pay Final Wages at Termination (Lab. Code §§ 201-203);
7. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
8. Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*);
9. Civil Penalties Under PAGA (Lab. Code §§ 2698, *et seq.*); and
10. Failure to Pay Wages Due as Agreed Upon Under Statute or Contract (Lab. Code §§ 221, 222 and 223).

DEMAND FOR JURY TRIAL

PAGA LWDA-CM-809234-20:	Oct. 9, 2020
PAGA LWDA-CM-822384-21:	Feb. 22, 2021
Action Filed:	Oct. 13, 2020
FAC Filed:	Dec. 23, 2020
SAC Filed:	Mar. 30, 2022
TAC Filed:	Dec. 1, 2022

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1 **FOURTH AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiff Kimberly Caro (“Plaintiff Caro”) and Plaintiff Brenda Leslie (“Plaintiff Leslie”) (Plaintiff
3 Caro and Plaintiff Leslie together “Plaintiffs”), based upon facts that either have evidentiary support or
4 are likely to have evidentiary support after a reasonable opportunity for further investigation and
5 discovery, allege as follows:

6 **INTRODUCTION & PRELIMINARY STATEMENT**

7 1. Plaintiffs bring this action against Defendant Kindred Healthcare Operating, LLC,
8 Defendant THC-Orange County, LLC, Defendant KND Development 53, LLC, and Does 1 through 10
9 (collectively referred to as “Defendants”) for California Labor Code violations and unfair business
10 practices stemming from Defendants’ failure to pay minimum and regular rate wages, failure to pay
11 overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to
12 maintain accurate records of hours worked and meal periods, failure to indemnify necessary business
13 expenses, failure to timely pay all wages to terminated employees, failure to furnish accurate wage
14 statements, and failure to pay wages due as agreed upon under statute or contract.

15 2. Plaintiffs bring the First through Eighth and the Tenth Causes of Action individually and
16 as a class action on behalf of themselves and certain current and former employees of Defendants
17 (hereinafter collectively referred to as the “Class” or “Class Members” and defined more fully below). The
18 Class consists of Plaintiffs and all other persons who have been employed by any Defendant in California
19 and classified as a non-exempt employee during the statute of limitations period applicable to the claims
20 pleaded here.

21 3. Plaintiffs bring the Ninth Cause of Action as a representative action under the California
22 Private Attorneys General Act (“PAGA”) to recover civil penalties that are owed to Plaintiffs, the State
23 of California, and past and present non-exempt, hourly-paid employees of Defendants who worked in
24 California during the applicable statute of limitations period (hereinafter referred to as the “Aggrieved
25 Employees”). Plaintiffs furthermore incorporate by reference all factual allegations and theories of
26 liability in Plaintiff Caro’s October 9, 2020 notice, March 17, 2022 amended notice, and September 9,
27 2022 second amended notice to the Labor and Workforce Development Agency (“LWDA”) and
28 Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC in PAGA

Case No. LWDA-CM-809234-20. Plaintiffs furthermore incorporate by reference all factual allegations and theories of liability in Plaintiff Leslie's February 22, 2021 notice and September 9, 2022 amended notice to the LWDA and Defendant Kindred Healthcare Operating, LLC and Defendant KND Development 53, LLC, in LWDA Case No. LWDA-CM-822384-21.

4. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including San Bernardino County. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

5. Despite these requirements, throughout the statutory period Defendants maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum wages, overtime wages, and double-time wages, in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to maintain accurate records of the hours employees worked;
- (c) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (d) Failing to indemnify employees for necessary business expenses incurred;
- (e) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (f) Willfully failing to pay employees all minimum wages, overtime wages, double-time wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates; and
- (g) Failing to provide employees with accurate, itemized wage statements containing

all the information required by the California Labor Code and IWC Wage Orders.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employers of Plaintiffs, the Class, and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior."

THE PARTIES

A. Plaintiffs

8. Plaintiff Caro is a California resident who worked for Defendants in San Bernardino County, California as a nurse from approximately February 2018 to around Fall 2019.

9. Plaintiff Leslie is a California resident who worked for Defendants in Los Angeles County, California as a nurse assistant from approximately July 2017 to August 2020.

10. Plaintiffs reserve the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiffs are informed and believe, and based upon that information and belief allege, that Defendant Kindred Healthcare Operating, LLC is, and at all times herein mentioned, was:

(a) A Delaware limited liability company with its place of business in San Bernardino, California.

(b) A company that maintains branches, facilities, and offices from which it transacts business in a variety of locations in San Bernardino County, and is otherwise within this Court's jurisdiction for purposes of service of process; and

(c) The former employer of Plaintiffs, and the current and/or former employer of the putative Class. Kindred Healthcare Operating, LLC suffered and permitted

1 Plaintiffs, the Class, and the Aggrieved Employees to work, and/or controlled their
2 wages, hours, or working conditions.

3 12. Plaintiffs are informed and believe, and based upon that information and belief allege, that
4 Defendant THC – Orange County, LLC, was previously identified as Defendant Kindred Hospital –
5 Ontario, was subsequently identified via an incorrect name amendment, and is, and at all times herein
6 mentioned, was:

7 (a) A corporation or limited liability company with its place of business in San
8 Bernardino, California.

9 (h) A corporation or company that maintains branches, facilities, and offices from
10 which it transacts business in a variety of locations in San Bernardino County, and
11 is otherwise within this Court’s jurisdiction for purposes of service of process; and

12 (i) The former employer of Plaintiff Caro, and the current and/or former employer of
13 the putative Class. THC – Orange County, LLC suffered and permitted Plaintiff
14 Caro, the Class, and the Aggrieved Employees to work, and/or controlled their
15 wages, hours, or working conditions.

16 13. Plaintiffs are informed and believe, and based upon that information and belief allege, that
17 Defendant KND Development 53, LLC is, and at all times herein mentioned, was:

18 (a) A corporation or limited liability company with its place of business in Los
19 Angeles, California.

20 (b) A corporation or company that maintains branches, facilities, and offices from
21 which it transacts business in a variety of locations in Los Angeles County, and is
22 otherwise within this Court’s jurisdiction for purposes of service of process; and

23 (c) The former employer of Plaintiff Leslie, and the current and/or former employer of
24 the putative Class. KND Development 53, LLC suffered and permitted Plaintiff
25 Leslie, the Class, and the Aggrieved Employees to work, and/or controlled their
26 wages, hours, or working conditions.

27 14. Plaintiffs do not know the true names or capacities of the persons or entities sued herein as
28 Does 1-10, inclusive, and therefore sue said Defendants by such fictitious names. Each of the Doe

1 Defendants was in some manner legally responsible for the damages suffered by Plaintiffs, the Class, and
2 the Aggrieved Employees as alleged herein. Plaintiffs will amend this complaint to set forth the true names
3 and capacities of these Defendants when they have been ascertained, together with appropriate charging
4 allegations, as may be necessary.

5 15. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of
6 them, were residents of, did business in, availed themselves of the jurisdiction of, and/or injured a
7 significant number of the Plaintiffs, the Class, and the Aggrieved Employees in the State of California.

8 16. Plaintiffs are informed and believe and thereon allege that at all relevant times each
9 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and the other
10 employees described in the class definitions below, and exercised control over their wages, hours, and
11 working conditions. Plaintiffs are informed and believe and thereon allege that, at all relevant times, each
12 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
13 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all
14 of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise
15 for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for
16 their conduct with respect to the matters alleged below. Plaintiffs are informed and believe and thereon
17 allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, that
18 each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled,
19 aided and abetted the conduct of all other Defendants.

20 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

21 17. Plaintiff Kimberly Caro worked for Defendants in San Bernardino County, California as a
22 nurse from approximately February 2018 to around Fall 2019. During the statutory time period,
23 Defendants classified Plaintiff Caro as non-exempt from California's overtime requirements. Also during
24 the statutory time period, Plaintiff Caro was typically scheduled to work 3 or more days in a workweek,
25 and typically 12 hours or more in each workday.

26 18. Plaintiff Brenda Leslie worked for Defendants in Los Angeles County, California as a
27 nurse assistant from approximately 2017 to August 2020. At all times Defendants classified Plaintiff
28 Leslie as non-exempt from California's overtime requirements. During the statutory time period, Plaintiff

1 Leslie was typically scheduled to work 3 or more days in a workweek, and typically in excess of 12 hours
2 in a single workday.

3 19. Throughout the statutory period, Defendants failed to pay Plaintiffs for all hours worked
4 (including minimum wages and overtime compensation), failed to provide Plaintiffs with uninterrupted
5 meal periods, failed to authorize and permit Plaintiffs to take uninterrupted rest periods, failed to maintain
6 accurate records of the hours Plaintiffs worked, failed to indemnify Plaintiffs for necessary business
7 expenses, failed to timely pay all final wages to Plaintiffs when Defendants terminated Plaintiffs'
8 employment, and failed to furnish accurate wage statements to Plaintiffs. As discussed below, Plaintiffs'
9 experiences working for Defendants were typical and illustrative.

10 20. Throughout the statutory period, Defendants maintained a policy and practice of failing to
11 pay Plaintiffs, the Class, and the Aggrieved Employees for all hours worked. Plaintiffs, the Class, and the
12 Aggrieved Employees were required to work off-the-clock during their employment. For example,
13 Plaintiffs, the Class, and the Aggrieved Employees were required to complete patients' charts on
14 Defendants' medical recordkeeping systems, including one known as ProTouch during their shifts, while
15 off-the-clock. Further, Defendants regularly used a system of time rounding and paying by shift, rather
16 than paying for all hours worked per day, in manners that resulted, over a period of time including during
17 workweeks and pay periods, shortly after which all earned wages were due, in failing to compensate
18 Plaintiffs, the Class, and the Aggrieved Employees properly for all the time they actually worked, even
19 though the realities of Defendants' operations are or were such that it is and was possible, practical, and
20 feasible to count and pay for work time to the minute. Further, Plaintiffs, the Class, and the Aggrieved
21 Employees worked at least 12 hours per day but were not paid double-time premiums for work performed
22 in excess of 12 hours per day. Further, Plaintiffs, the Class, and the Aggrieved Employees earned
23 additional wages, premiums or remunerations for working during specific shifts, which Defendants failed
24 to consider and incorporate when determining their regular rates of pay, resulting in Defendants' failure
25 to pay overtime and double-time wages owed at the correct rates of pay including at no less than one and
26 one-half times and twice the regular rate of pay per employee. Accordingly, Defendants frequently paid
27 Plaintiffs, the Class, and the Aggrieved Employees less than all their work time. Some of this unpaid work
28 also should have been paid at the overtime or double-time rate. In maintaining practices of time rounding

1 and paying for hours worked per shift, rather than paying for all hours worked per day, Defendants failed
2 to maintain accurate records of the hours Plaintiffs, the Class, and the Aggrieved Employees worked. In
3 maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate records of
4 the hours Plaintiffs, the Class, and the Aggrieved Employees worked and monies due and payable to them.

5 21. Throughout the statutory period, Defendants have wrongfully failed to provide Plaintiffs,
6 the Class, and the Aggrieved Employees with legally compliant meal periods. Defendants regularly
7 required Plaintiffs, the Class, and the Aggrieved Employees to work in excess of five consecutive hours a
8 day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five
9 hours of work, or without compensating Plaintiffs, the Class, and the Aggrieved Employees for meal
10 periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants did
11 not adequately inform Plaintiffs, the Class, and the Aggrieved Employees of their rights to take a meal
12 period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour
13 of work. Moreover, Defendants did not have adequate written policies or practices providing meal periods
14 for Plaintiffs, the Class, and the Aggrieved Employees, nor did Defendants have adequate policies or
15 practices regarding the timing of meal periods. Defendants also did not have adequate policies or practices
16 to document and verify whether Plaintiffs, the Class, and the Aggrieved Employees were taking their
17 required meal periods. Additionally, Defendants maintained a policy and practice of failing to pay
18 Plaintiffs, the Class, and the Aggrieved Employees the correct amount of meal period premiums in
19 compliance with California law. Specifically, Defendants failed to include all remuneration, including
20 shift differentials, when calculating the regular rate of pay applicable to Plaintiffs, the Class, and the
21 Aggrieved Employees. Instead, Defendants paid Plaintiffs and the Aggrieved Employees a rate that was
22 based solely on their base hourly wage and thus failed to accurately compensate their meal premium pay.
23 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiffs, the Class, and
24 the Aggrieved Employees in compliance with California law.

25 22. Throughout the statutory period, Defendants have wrongfully failed to authorize and
26 permit Plaintiffs, the Class, and the Aggrieved Employees to take timely and duty-free rest periods.
27 Defendants regularly, but not always, required Plaintiffs, the Class, and the Aggrieved Employees to work
28 in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a

1 10-minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of
2 four hours), or without compensating Plaintiffs, the Class, and the Aggrieved Employees for rest periods
3 that were not authorized or permitted. Further, Plaintiffs, the Class, and the Aggrieved Employees were
4 not authorized to take a third rest period in those instances where they worked in excess of 10 hours per
5 workday. Additionally, Defendants maintained a policy and practice of failing to pay Plaintiffs, the Class,
6 and the Aggrieved Employees the correct amount of rest period premiums in compliance with California
7 law. Specifically, Defendants failed to include all remuneration, including shift differentials, when
8 calculating the regular rate of pay applicable to Plaintiffs, the Class, and the Aggrieved Employees.
9 Instead, Defendants paid Plaintiffs and the Aggrieved Employees a rate that was based solely on their base
10 hourly wage and thus failed to accurately compensate their rest premium pay. Accordingly, Defendants'
11 policy and practice was to not authorize and permit Plaintiffs, the Class, and the Aggrieved Employees to
12 take rest periods in compliance with California law.

13 23. Throughout the statutory period, Defendants wrongfully required Plaintiffs, the Class, and
14 the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
15 Defendants without full reimbursement. This included, without limitation, requiring Plaintiffs, the Class,
16 and the Aggrieved Employees to purchase specific types of scrubs for work and to use their own personal
17 cellular telephones for work-related purposes, including to receive and respond to work instructions
18 without reimbursement. Plaintiffs, the Class, and the Aggrieved Employees incurred these substantial
19 expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to
20 indemnify Plaintiffs, the Class, and the Aggrieved Employees for these employment-related expenses.

21 24. Throughout the statutory period, Defendants willfully failed and refused to timely pay
22 Plaintiffs, the Class, and the Aggrieved Employees at the conclusion of their employment all wages,
23 including overtime wages, double-time wages, meal period premium wages, and rest period premium
24 wages.

25 25. Throughout the statutory period, Defendants failed to furnish Plaintiffs, the Class, and the
26 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and
27 all gross and net wages earned (including correct legal names, correct hours worked, correct wages earned
28 for hours worked, correct overtime and double-time hours worked, correct wages for meal periods that

1 were not provided in accordance with California law, and correct wages for rest periods that were not
2 authorized and permitted in accordance with California law). As a result of these violations of California
3 Labor Code § 226(a), Plaintiffs, the Class, and the Aggrieved Employees suffered injury because, among
4 other things:

- 5 (a) the violations led them to believe that they were not entitled to be paid minimum
6 wages, overtime wages, meal period premium wages, and rest period premium
7 wages to which they were entitled, even though they were entitled;
- 8 (b) the violations led them to believe that they had been paid the minimum, overtime,
9 meal period premium, and rest period premium wages to which they were entitled,
10 even though they had not been;
- 11 (c) the violations led them to believe they were not entitled to be paid minimum,
12 overtime, meal period premium, and rest period premium wages at the correct
13 California rate even though they were;
- 14 (d) the violations led them to believe they had been paid minimum, overtime, meal
15 period premium, and rest period premium wages at the correct California rate even
16 though they had not been;
- 17 (e) the violations hindered them from determining the amounts of minimum, overtime,
18 meal period premium, and rest period premium wages owed to them;
- 19 (f) in connection with their employment before and during this action, and in
20 connection with prosecuting this action, the violations caused them to have to
21 perform mathematical computations to determine the amounts of wages owed to
22 them, computations they would not have to make if the wage statements contained
23 the required accurate information;
- 24 (g) by understating the wages truly due to them, the violations caused them to lose
25 entitlement and/or accrual of the full amount of Social Security, disability,
26 unemployment, and other governmental benefits; and
- 27 (h) the wage statements inaccurately and in a confusing manner understated the wages,
28 hours, and wage rates to which Plaintiffs, the Class, and the Aggrieved Employees

1 were entitled, and Plaintiffs, the Class, and the Aggrieved Employees were paid
2 less than the wages and wage rates to which they were entitled.

3 Thus, Plaintiffs, the Class, and the Aggrieved Employees are owed the amounts provided for in California
4 Labor Code § 226(e).

5 26. Throughout the statutory period, Defendants maintained a policy and practice of not paying
6 Plaintiffs, the Class, and the Aggrieved Employees for all hours worked, including all minimum, regular
7 rate and overtime wages. Defendants regularly use a system of time rounding in a manner that resulted,
8 over a period of time, in failing to compensate Plaintiffs, the Class, and the Aggrieved Employees properly
9 for all the time they have actually worked, even though the realities of Defendants' operations are such
10 that it was possible, practical, and feasible to count and pay for work time to the minute. As a result,
11 Defendants frequently paid Plaintiffs, the Class, and the Aggrieved Employees less than all their work
12 time, some of which should have been paid at the minimum wage, regular hourly or overtime rates.
13 Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiffs, the
14 Class, and the Aggrieved Employees for all hours worked, including all overtime wages. For example,
15 Defendants threatened Plaintiffs, the Class, and the Aggrieved Employees with disciplinary action if they
16 did not clock in on time for their shifts while concomitantly encouraging them to clock in early, but not
17 earlier than seven minutes, before their shift start times. Defendants encouraged Plaintiffs, the Class, and
18 the Aggrieved Employees to clock in early because Defendants rounded the time down and did not
19 compensate for time on the clock before the beginning of shifts. As such, when Plaintiffs, the Class, and
20 the Aggrieved Employees clocked in early, such time was, effectively, off-the-clock work because
21 Defendants did not compensate Plaintiffs, the Class, and the Aggrieved Employees for that time. It follows
22 that all the time Plaintiffs, the Class, and the Aggrieved Employees were subject to Defendants' control
23 and performed work during the times that were rounded down, including the times Plaintiffs, the Class,
24 and the Aggrieved Employees were required to review or complete patients' charts on Defendants'
25 medical recordkeeping systems, including one known as ProTouch during their shifts was work performed
26 while off-the-clock. Plaintiffs, the Class, and the Aggrieved Employees were also required to undergo
27 training at home, which included watching videos and tutorials, off-the-clock and uncompensated. Also,
28 Plaintiffs, the Class, and the Aggrieved Employees were required to use their own personal cellular

1 telephones for work-related purposes, including to enter and review notes and create work-related records
2 in Defendants' electronic recordkeeping and information management systems while off-the-clock and
3 uncompensated. Further, Defendants automatically deducted meal breaks, despite the fact that Plaintiffs,
4 the Class, and the Aggrieved Employees did not always take these breaks, leading to uncompensated work.
5 Additionally, Plaintiffs, the Class, and the Aggrieved Employees were required to be on-call for long
6 periods of time, without compensation. Additionally, Defendants engaged in a policy and practice of
7 paying Plaintiffs, the Class, and the Aggrieved Employees meal period premium payments, rest period
8 premium payments, paid sick day hours and paid time off hours at their base hourly rates and not Plaintiffs,
9 the Class, and the Aggrieved Employees' regular hourly rates of pay as required, hence, depriving them
10 of their regular rate wages. Additionally, Plaintiffs, the Class, and the Aggrieved Employees were
11 deprived of overtime wages at one-and-one-half times or two times their regular hourly rates because
12 Defendants engaged in a policy and practice of paying them overtime hours at Plaintiffs, the Class, and
13 the Aggrieved Employees' base hourly rates and one-half times their regular hourly rates or two times
14 their base hourly rates, which demonstrates Defendants knew the difference between base hourly rates
15 and regular hourly rates but, nevertheless, failed to incorporate the value of all compensation Plaintiffs,
16 the Class, and the Aggrieved Employees earned during their periods of work when paying them wages for
17 overtime hours they accrued including by failing to account for the value of incentive payments, bonus
18 payments, shift differential payments, holiday payments, retroactive payments, extra shift premium
19 payments and other premium payments. Further, Defendants automatically deducted meal breaks, despite
20 the fact that Plaintiffs, the Class, and the Aggrieved Employees did not always take these breaks, leading
21 to uncompensated work. Additionally, Plaintiffs, the Class, and the Aggrieved Employees were required
22 to be on-call for long periods of time, without compensation. Additionally, Employers credited Plaintiffs,
23 the Class, and the Aggrieved Employees with overtime hours by accounting for their recorded times during
24 shifts and not by accounting for the hours recorded or worked on days or during weeks, including during
25 overnight shifts that started during defined, initial days or weeks but ended on defined, following days or
26 weeks, rather than by crediting the hours recorded during defined, initial days or weeks, leading to the
27 underpayment of overtime wages due for all work performed in a day or week as required.

28 27. Throughout the statutory period, Defendants, in maintaining a practice of not paying all

1 wages owed, Defendants failed to maintain accurate records of the hours Plaintiffs, the Class, and the
2 Aggrieved Employees worked. Defendants intentionally and willfully failed to provide employees with
3 complete and accurate wage statements. The deficiencies include, among other things, the failure to
4 correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the
5 true net wages earned, including wages for meal periods that were not provided in accordance with
6 California law, wages for rest periods that were not authorized and permitted to take in accordance with
7 California law, and correct wages earned for all hours worked. Defendants also inaccurately reported
8 Plaintiffs, the Class, and the Aggrieved Employees' hours worked on their wage statements by reporting
9 hours recorded during overnight shifts that started during defined, initial pay periods but ended in the
10 defined, following pay periods, rather than by reporting the hours recorded up to the end of the defined,
11 initial pay periods alone, leading to confusion about the hours worked in during defined, initial pay periods
12 and the defined, following pay periods.

13 28. Throughout the statutory period, Defendants engaged in a policy and practice of failing to
14 provide Plaintiffs, the Class, and the Aggrieved Employees all wages and compensation due to them by
15 using various methods and schemes described herein including by paying Plaintiffs, the Class, and the
16 Aggrieved Employees at less than all minimum wages and regular hourly rates of pay as required under
17 statute and contract, including under one or more collective bargaining agreements, including by rounding,
18 averaging or claiming credits when Defendants underpaid Plaintiffs, the Class, and the Aggrieved
19 Employees during certain days, weeks or pay periods under the pre-tense that it was just and proper for
20 Defendants to average or claim credits against wages due for work performed during certain days, weeks
21 or pay periods by collecting or receiving previously paid wages, which Defendants had already paid or
22 purportedly overpaid Plaintiffs, the Class, and the Aggrieved Employees on other days, weeks or pay
23 periods including under Defendants' rounding policy. Defendants also failed to pay Plaintiffs, the Class,
24 and the Aggrieved Employees by claiming it would pay overtime wages at one-and-one-half their regular
25 hourly rates or at two times their regular rates, but secretly, willfully and with the intent to defraud, paid
26 them only at their base hourly rates and one-half times their regular hourly rates or two times their base
27 hourly rates for all overtime hours worked in contravention of applicable statutes and contracts including
28 collective bargaining agreements.

CLASS ACTION ALLEGATIONS

29. Plaintiffs bring certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure § 382.

30. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

31. The proposed Class consists of and is defined as:

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC, Defendant KND Development 53, LLC, and Defendant THC – Orange County, LLC in California as an hourly, non-exempt employee at any time at any time from August 1, 2016 to the date when notice is sent, except for Defendant THC-Orange County, LLC's employees who released their claims as part of the finally adjudged settlement in *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino Superior Court, Case No. CIVDS1708958 and who only worked prior to January 11, 2021.

32. At all material times, Plaintiffs were members of the Class.

33. Plaintiffs undertake this concerted activity to improve the wages and working conditions of all Class Members.

34. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiffs at this time, however, the Class is estimated to be greater than 100 individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all Class Members' claims as demonstrated herein.

(c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined

community of interest and typicality of claims, as demonstrated herein. Plaintiffs have no conflicts with or interests antagonistic to any Class Member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

35. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as

1 alleged herein, Defendants have:

- 2 (a) Failed to pay Class Members for all hours worked, including minimum wages,
3 overtime wages, and double-time wages;
- 4 (b) Failed to provide meal periods and pay meal period premium wages to Class
5 Members;
- 6 (c) Failed to authorize and permit rest periods and pay rest period premium wages to
7 Class Members;
- 8 (d) Failed to reimburse Class Members for all necessary business expenses;
- 9 (e) Failed to promptly pay all wages due to Class Members upon their discharge or
10 resignation;
- 11 (f) Failed to provide Class Members with accurate wage statements;
- 12 (g) Failed to maintain accurate records of all hours Class Members worked, and all
13 meal periods Class Members took or missed; and
- 14 (h) Violated California Business & Professions Code §§ 17200, *et seq.* as a result of
15 their illegal conduct as described above.

16 36. This Court should permit this action to be maintained as a class action pursuant to
17 California Code of Civil Procedure § 382 because:

- 18 (a) The questions of law and fact common to the Class predominate over any question
19 affecting only individual members;
- 20 (b) A class action is superior to any other available method for the fair and efficient
21 adjudication of the claims of the members of the Class;
- 22 (c) The members of the Class are so numerous that it is impractical to bring all
23 members of the class before the Court;
- 24 (d) Plaintiffs, and the other members of the Class, will not be able to obtain effective
25 and economic legal redress unless the action is maintained as a class action;
- 26 (e) There is a community of interest in obtaining appropriate legal and equitable relief
27 for the statutory violations, and in obtaining adequate compensation for the
28 damages and injuries for which Defendants are responsible in an amount sufficient

to adequately compensate the members of the Class for the injuries sustained;

(f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or

2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and

(i) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

37. Plaintiffs contemplate the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiffs would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum and Regular Rate Wages for All Hours Worked)

38. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent with this cause of action.

39. “Hours worked” is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

40. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiffs and the Class compensation for all hours they worked. By their failures to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of Section 1194 of the California Labor Code, and any additional applicable Wage Orders, which require such compensation to non-exempt employees.

41. Accordingly, Plaintiffs and the Class are entitled to recover minimum wages for all non-overtime hours worked for Defendants.

42. By and through the conduct described above, Plaintiffs and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

43. By virtue of the Defendants’ unlawful failure to pay additional compensation to Plaintiffs and the Class for their non-overtime hours worked without pay, Plaintiffs and the Class suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiffs and the Class, but which exceed the jurisdictional minimum of this Court, and which will be ascertained according to proof at trial.

44. By failing to keep adequate time records required by California Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due to Plaintiffs and the Class.

45. Pursuant to California Labor Code section 1194.2, Plaintiffs and the Class are entitled to recover liquidated damages (double damages) for Defendants’ failure to pay minimum wages.

46. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiffs and the Class were entitled to be paid twice a month at rates required by law, including minimum wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiffs and the Class all such wages due, and failed to pay those wages twice a month.

47. Plaintiffs and the Class are also entitled to seek recovery of all unpaid minimum wages, interest, and reasonable attorneys’ fees and costs pursuant to California Labor Code §§ 218.5, 218.6, and

1 1194(a).

2 **SECOND CAUSE OF ACTION**

3 **(Against all Defendants for Failure to Pay Overtime Wages)**

4 48. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
5 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent
6 with this cause of action.

7 49. California Labor Code § 510 provides that employees in California shall not be employed
8 more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional
9 compensation beyond their regular wages in amounts specified by law.

10 50. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be
11 employed more than eight hours in any workday unless they receive additional compensation beyond their
12 regular wages in amounts specified by law. Additionally, California Labor Code § 1198 states that the
13 employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is
14 unlawful.

15 51. At all times relevant hereto, Plaintiffs and the Class have worked more than eight hours in
16 a workday, as employees of Defendants.

17 52. At all times relevant hereto, Defendants failed to pay Plaintiffs and the Class overtime
18 compensation for the hours they have worked in excess of the maximum hours permissible by law as
19 required by California Labor Code §§ 510 and 1198. Plaintiffs and the Class are regularly required to
20 work overtime hours.

21 53. By virtue of Defendants' unlawful failures to pay additional premium rate compensation
22 to the Plaintiffs and the Class for their overtime hours worked, Plaintiffs and the Class have suffered, and
23 will continue to suffer, damages in amounts which are presently unknown to them but which exceed the
24 jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

25 54. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants
26 have made it difficult to calculate the full extent of overtime compensation due to Plaintiffs and the Class.

27 55. Plaintiffs and the Class also request recovery of overtime compensation according to proof,
28 interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the assessment

1 of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or
2 other statutes.

3 56. California Labor Code § 204 requires employers to provide employees with all wages due
4 and payable twice a month. The Wage Orders also provide that every employer shall pay to each
5 employee, on the established payday for the period involved, overtime wages for all overtime hours
6 worked in the payroll period. Defendants failed to provide Plaintiffs and the Class with all compensation
7 due, in violation of California Labor Code § 204.

8 **THIRD CAUSE OF ACTION**

9 **(Against All Defendants for Failure to Provide Meal Periods)**

10 57. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
11 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent
12 with this cause of action.

13 58. Under California law, Defendants have an affirmative obligation to relieve the Plaintiffs
14 and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiffs
15 and the Class' sixth hour of work in a workday, and to take their second meal periods no later than the
16 start of the eleventh hour of work in the workday. Section 512 of the California Labor Code, and Section
17 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least 30
18 minutes for each five-hour period worked. It is a violation of Section 226.7 of the California Labor Code
19 for an employer to require any employee to work during any meal period mandated under any Wage
20 Order.

21 59. Despite these legal requirements, Defendants regularly failed to provide Plaintiffs and the
22 Class with both meal periods as required by California law. By their failures to permit and authorize
23 Plaintiffs and the Class to take all meal periods as alleged above (or due to the fact that Defendants made
24 it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully violated the
25 provisions of Section 226.7 of the California Labor Code and the applicable Wage Orders.

26 60. Under California law, Plaintiffs and the Class are entitled to be paid one hour of additional
27 wages for each workday he or she was not provided with all required meal period(s), plus interest thereon.

28 ///

FOURTH CAUSE OF ACTION

(Against All Defendants for Failure to Authorize and Permit Rest Periods)

61. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent with this cause of action.

62. Defendants are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that the employer permit and authorize all employees to take paid rest periods of 10 minutes each for each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours, then the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws. It is a violation of Section 226.7 of the California Labor Code for an employer to require any employee to work during any rest period mandated under any Wage Order.

63. Despite these legal requirements, Defendants failed to authorize Plaintiffs and the Class to take rest breaks, regardless of whether employees worked more than 4 hours in a workday. By their failure to permit and authorize Plaintiffs and the Class to take rest periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and the applicable Wage Orders.

64. Under California law, Plaintiffs and the Class are entitled to be paid one hour of additional wages for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against All Defendants for Failure to Indemnify Necessary Business Expenses)

65. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent with this cause of action.

66. Defendants violated Labor Code section 2802 and the IWC Wage Orders, by failing to pay and indemnify the Plaintiffs and the Class for their necessary expenditures and losses incurred in direct

consequence of the discharge of their duties or of their obedience to directions of Defendants.

67. As a result, Plaintiffs and the Class were damaged at least in the amounts of the expenses they paid, or which were deducted by Defendants from their wages.

68. Plaintiffs and the Class they represent are entitled to attorney's fees, expenses, and costs of suit pursuant to Labor Code section 2802(c) and interest pursuant to Labor Code section 2802(b).

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

69. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent with this cause of action.

70. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

71. Within the applicable statute of limitations, the employment of Plaintiffs and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

72. Defendants' failure to pay Plaintiffs and those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

73. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage

1 from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not
2 continue for more than thirty (30) days.

3 74. Plaintiffs and the Class are entitled to recover from Defendants their additionally accruing
4 wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant
5 to California Labor Code § 203.

6 75. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiffs and the Class are
7 also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

8 **SEVENTH CAUSE OF ACTION**

9 **(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant Wage**
10 **Records)**

11 76. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
12 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent
13 with this cause of action.

14 77. At all material times set forth herein, California Labor Code § 226(a) provides that every
15 employer shall furnish each of his or her employees an accurate itemized wage statement in writing
16 showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the
17 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
18 on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
20 period for which the employee is paid, (7) the name of the employee and the last four digits of his or her
21 social security number or an employee identification number other than a social security number, (8) the
22 name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

24 78. Defendants have intentionally and willfully failed to provide employees with complete and
25 accurate wage statements. The deficiencies include, among other things, the failure to correctly identify
26 the gross wages earned by Plaintiffs and the Class, the failure to list the true "total hours worked by the
27 employee," and the failure to list the true net wages earned.

28 79. As a result of Defendants' violations of California Labor Code § 226(a), Plaintiffs and the

1 Class have suffered injury and damage to their statutorily-protected rights.

2 80. Specifically, Plaintiffs and the members of the Class have been injured by Defendants'
3 intentional violation of California Labor Code § 226(a) because they were denied both their legal right to
4 receive, and their protected interest in receiving, accurate, itemized wage statements under California
5 Labor Code § 226(a).

6 81. Calculation of the true wage entitlement for Plaintiffs and the Class is difficult and time
7 consuming. As a result of this unlawful burden, Plaintiffs and the Class were also injured as a result of
8 having to bring this action to attempt to obtain correct wage information following Defendants' refusal to
9 comply with many of the mandates of California's Labor Code and related laws and regulations.

10 82. Plaintiffs and the Class are entitled to recover from Defendants the greater of their actual
11 damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate
12 penalty not exceeding four thousand dollars per employee.

13 83. Plaintiffs and the Class are also entitled to injunctive relief, as well as an award of
14 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code §
15 226(h).

16 **EIGHTH CAUSE OF ACTION**

17 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200, *et seq.*)**

18 84. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
19 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent
20 with this cause of action.

21 85. Defendants, and each of them, are "persons" as defined under California Business &
22 Professions Code § 17201.

23 86. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful,
24 and harmful to Plaintiffs, other Class members, and to the general public. Plaintiffs seek to enforce
25 important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

26 87. Defendants' activities, as alleged herein, are violations of California law, and constitute
27 unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et*
28 *seq.*

1 88. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated
2 on the violation of any state or federal law. All of the acts described herein as violations of, among other
3 things, the California Labor Code, are unlawful and in violation of public policy; and in addition are
4 immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful
5 and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et*
6 *seq.*

7 **Failure to Pay Minimum Wages**

8 89. Defendants' failure to pay minimum wages, and other benefits in violation of the California
9 Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions
10 Code §§ 17200, *et seq.*

11 **Failure to Pay Overtime Wages**

12 90. Defendants' failure to pay overtime compensation and other benefits in violation of
13 California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by
14 California Business & Professions Code §§ 17200, *et seq.*

15 **Failure to Maintain Accurate Records of All Hours Worked**

16 91. Defendants' failure to maintain accurate records of all hours worked in accordance with
17 California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or unfair activity
18 prohibited by California Business & Professions Code §§ 17200, *et seq.*

19 **Failure to Provide Meal Periods**

20 92. Defendants' failure to provide meal periods in accordance with California Labor Code §§
21 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity
22 prohibited by California Business & Professions Code §§ 17200, *et seq.*

23 **Failure to Maintain Accurate Records of Meal Periods**

24 93. Defendants' failure to maintain accurate records of employee meal periods in accordance
25 with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
26 and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

27 **Failure to Authorize and Permit Rest Periods**

28 94. Defendants' failure to authorize and permit rest periods in accordance with California

1 Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair
2 activity prohibited by Business and Professions Code §§ 17200, *et seq.*

3 **Failure to Provide Accurate Itemized Wage Statements**

4 95. Defendants' failure to provide accurate itemized wage statements in accordance with
5 California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity prohibited by
6 California Business & Professions Code §§ 17200, *et seq.*

7 **Failure to Pay Wages Due as Agreed Upon Under Statute or Contract**

8 96. Defendants' failure to wages due via collection, receipt and as agreed upon under statute
9 or contract in accordance with California Labor Code §§ 221, 222 and 223, as alleged above, constitutes
10 unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

11 97. By and through their unfair, unlawful and/or fraudulent business practices described herein,
12 the Defendants, have obtained valuable property, money and services from Plaintiffs and Class Members,
13 and have deprived Plaintiffs and Class Members of valuable rights and benefits guaranteed by law, all to
14 their detriment.

15 98. Plaintiffs and Class Members suffered monetary injury as a direct result of Defendants'
16 wrongful conduct.

17 99. Plaintiffs, individually, and on behalf of members of the Class, are entitled to, and do, seek
18 such relief as may be necessary to disgorge money and/or property which the Defendants have wrongfully
19 acquired, or of which Plaintiffs and the Class have been deprived, by means of the above-described unfair,
20 unlawful and/or fraudulent business practices. Plaintiffs and the Class are not obligated to establish
21 individual knowledge of the wrongful practices of Defendants in order to recover restitution.

22 100. Plaintiffs, individually, and on behalf of members of the Class, are further entitled to and
23 do seek a declaration that the above described business practices are unfair, unlawful and/or fraudulent,
24 and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-
25 described unfair, unlawful and/or fraudulent business practices in the future.

26 101. Plaintiffs and Class Members have no plain, speedy, and/or adequate remedy at law to
27 redress the injuries which Plaintiffs and Class Members have suffered as a consequence of the Defendants'
28 unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent

1 business practices described above, Plaintiffs and Class Members have suffered and will continue to suffer
2 irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in
3 said unfair, unlawful and/or fraudulent business practices.

4 102. Plaintiffs also allege that if Defendants are not enjoined from the conduct set forth herein,
5 they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

6 103. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiffs and Class
7 Members are entitled to restitution of the wages withheld and retained by Defendants during a period that
8 commences at least four years prior to the filing of this complaint; a permanent injunction requiring
9 Defendants to pay all outstanding wages due to Plaintiffs and Class Members; an award of attorneys' fees
10 pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

11 **NINTH CAUSE OF ACTION**

12 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal.**

13 **Lab. Code §§ 2698, *et seq.*)**

14 104. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
15 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent
16 with this cause of action.

17 105. At all times herein mentioned, Defendants were subject to the Labor Code of the State of
18 California and the applicable Industrial Welfare Commission Wage Orders.

19 106. California Labor Code § 2699(a) specifically provides for a private right of action to
20 recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any
21 provision of this code that provides for a civil penalty to be assessed and collected by the Labor and
22 Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or
23 employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought
24 by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant
25 to the procedures specified in Section 2699.3."

26 107. Plaintiff Caro has exhausted her administrative remedies pursuant to California Labor Code
27 § 2699.3. On October 9, 2020, Plaintiff Caro gave written notice by online filing to the Labor and
28 Workforce Development Agency and by certified mail to Defendants of the specific provisions of the

1 Labor Code that Defendants have violated against Plaintiff Caro and certain current and former aggrieved
2 employees, including the facts and theories to support the violations. Plaintiff Caro also paid the filing
3 fee. Plaintiff Caro's PAGA case number is LWDA-CM-809234-20. Plaintiff Caro has since filed a March
4 17, 2022 amended PAGA notice and September 9, 2022 second amended PAGA notice, which are all
5 incorporated herein by reference.

6 108. Plaintiff Leslie has exhausted her administrative remedies pursuant to California Labor
7 Code § 2699.3. On October 9, 2020, Plaintiff Leslie gave written notice by online filing to the Labor and
8 Workforce Development Agency and by certified mail to Defendants of the specific provisions of the
9 Labor Code that Defendants have violated against Plaintiff Leslie and certain current and former aggrieved
10 employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee.
11 Plaintiff Leslie's PAGA case number is LWDA-CM-809234-20. Plaintiff Leslie has since filed a
12 September 9, 2022 amended PAGA notice, which are all incorporated herein by reference.

13 109. More than 65 days has elapsed since Plaintiffs provided notice, but the Labor and
14 Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code
15 violations discussed in the notice. Accordingly, Plaintiffs may commence a civil action to recover
16 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in
17 this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§
18 206.5, 210, 225.5, 226.3, 245.8, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and IWC Wage
19 Order, § 20.

20 110. In addition, Plaintiffs seek penalties for Defendants' violation of California Labor Code §
21 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor
22 who willfully fails to maintain accurate and complete records required by California Labor Code § 1174
23 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer
24 shall keep time records showing when the employee begins and ends each work period. Meal periods, and
25 total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order §
26 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

27 111. During the time period of employment for Plaintiffs and the Aggrieved Employees,
28 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain

1 accurate records showing meal periods. Defendants' failure to provide and maintain records required by
2 the Labor Code IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability to know,
3 understand and question the accuracy and frequency of meal periods. Therefore, Plaintiffs and the
4 Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
5 unjustified economic enrichment to Defendants. As a direct result, Plaintiffs and the Aggrieved Employees
6 have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages,
7 lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully
8 perform its obligation under state law, all to their respective damage in amounts according to proof at trial.
9 Because of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage
10 Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented
11 from knowing, understanding, and disputing the wage payments paid to them.

12 112. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award of
13 civil penalties on behalf of themselves, the State of California, and Aggrieved Employees of Defendants.
14 The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at
15 trial. These penalties are in addition to all other remedies permitted by law.

16 113. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs pursuant to
17 California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be
18 entitled to an award of reasonable attorney's fees and costs."

19 **TENTH CAUSE OF ACTION**

20 **(Against all Defendants for Failure to Pay Wages Due Under Statute or Contract, Cal. Lab. Code**
21 **§§ 221, 222 and 223)**

22 114. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs 1
23 through 28 in this Complaint as well as all other facts and allegations, in any other paragraph, consistent
24 with this cause of action.

25 115. Labor Code § 221 provides: "It shall be unlawful for any employer to collect or receive
26 from an employee any part of wages theretofore paid by said employer to said employee."

27 116. Labor Code § 222 provides: "It shall be unlawful, in case of any wage agreement arrived
28 at through collective bargaining, either willfully or unlawfully or with intent to defraud an employee, a

competitor, or any other person, to withhold from said employee any part of the wage agreed upon.”

117. Labor Code § 223 provides: “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

118. Plaintiffs and the Class are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 221, 222 and 223, which govern Defendants’ obligation to pay “wages.”

119. Defendants failed to provide Plaintiffs and the Class all wages and compensation due to them by using various methods and schemes described herein including, but not limited to, by paying Plaintiffs and the Class at less than all minimum, regular hourly and overtime rates of pay as required under statute and contract, including under one or more collective bargaining agreements, by rounding, averaging or claiming credits when Defendants underpaid Plaintiffs and the Class during certain days, weeks or pay periods under the pre-tense that it was just and proper for Defendants to average or claim credits against wages due for work performed during certain days, weeks or pay periods by collecting or receiving previously paid wages, which Defendants had already paid or purportedly overpaid Plaintiffs and the Class on other days, weeks or pay periods including under Defendants’ rounding policy.

120. Defendants also failed to pay Plaintiffs and the Class by claiming they would pay overtime wages at one-and-one-half their regular hourly rates or at two times their regular rates, but secretly, willfully and with the intent to defraud, paid them only at their base hourly rates and one-half times their regular hourly rates or two times their base hourly rates for all overtime hours worked in contravention of applicable statutes and contracts including collective bargaining agreements.

121. By and through the conduct described above, Plaintiffs and the Class have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

122. Pursuant to California Labor Code section 1194, Plaintiffs and the Class, notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or 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 attorney’s fees, and costs of suit.

123. Pursuant to California Labor Code section 1194.2, Plaintiffs and the Class are entitled to

1 recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

2 **PRAYER FOR RELIEF**

3 Plaintiffs, individually, and on behalf of all others similarly situated only with respect to the class
4 claims, pray for relief and judgment against Defendants, jointly and severally, as follows:

5 **Class Certification**

6 124. That this action be certified as a class action with respect to the First, Second, Third, Fourth,
7 Fifth, Sixth, Seventh, Eighth and Tenth Causes of Action;

8 125. That Plaintiffs be appointed as the representatives of the Class; and

9 126. That counsel for Plaintiffs be appointed as Class Counsel.

10 **As to the First Cause of Action**

11 127. That the Court declare, adjudge, and decree that Defendants violated California Labor
12 Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum wages
13 due;

14 128. For general unpaid wages as may be appropriate;

15 129. For pre-judgment interest on any unpaid compensation commencing from the date such
16 amounts were due;

17 130. For liquidated damages;

18 131. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
19 Labor Code § 1194(a); and

20 132. For such other and further relief as the Court may deem equitable and appropriate.

21 **As to the Second Cause of Action**

22 133. That the Court declare, adjudge, and decree that Defendants violated California Labor
23 Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages
24 due;

25 134. For general unpaid wages at overtime wage rates as may be appropriate;

26 135. For pre-judgment interest on any unpaid overtime compensation commencing from the
27 date such amounts were due;

28 136. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California

1 Labor Code § 1194(a); and

2 137. For such other and further relief as the Court may deem equitable and appropriate.

3 As to the Third Cause of Action

4 138. That the Court declare, adjudge, and decree that Defendants violated California Labor
5 Code §§ 226.7 and 512, and the IWC Wage Orders;

6 139. For unpaid meal period premium wages as may be appropriate;

7 140. For pre-judgment interest on any unpaid compensation commencing from the date such
8 amounts were due;

9 141. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for
10 costs of suit incurred herein; and

11 142. For such other and further relief as the Court may deem equitable and appropriate.

12 As to the Fourth Cause of Action

13 143. That the Court declare, adjudge, and decree that Defendants violated California Labor
14 Code §§ 226.7 and 512, and the IWC Wage Orders;

15 144. For unpaid rest period premium wages as may be appropriate;

16 145. For pre-judgment interest on any unpaid compensation commencing from the date such
17 amounts were due;

18 146. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5, and for
19 costs of suit incurred herein; and

20 147. For such other and further relief as the Court may deem equitable and appropriate.

21 As to the Fifth Cause of Action

22 148. That the Court declare, adjudge, and decree that Defendants violated Labor Code § 2802
23 and the IWC Wage Orders;

24 149. For general unpaid wages and reimbursement of business expenses as may be appropriate;

25 150. For pre-judgment interest on any unpaid compensation commencing from the date such
26 amounts were due;

27 151. For reasonable attorneys' fees and for costs of suit incurred herein; and

28 152. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

153. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

154. For statutory wage penalties pursuant to California Labor Code § 203 for former employees who have left Defendants' employ;

155. For pre-judgment interest on any unpaid wages from the date such amounts were due;

156. For reasonable attorneys' fees and for costs of suit incurred herein; and

157. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

158. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

159. For statutory penalties and actual damages pursuant to California Labor Code § 226(e);

160. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(h);

161. For reasonable attorneys' fees and for costs of suit incurred herein; and

162. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

163. That the Court declare, adjudge and decree that Defendants violated California Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked (including minimum, overtime, and double-time wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, failing to furnish accurate wage statements, and failing to indemnify necessary business expenses;

164. For restitution of unpaid wages to Plaintiffs and all Class Members and prejudgment interest from the day such amounts were due and payable;

165. For the appointment of a receiver to receive, manage and distribute any and all funds

disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200, *et seq.*;

166. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;

167. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, *et seq.*; and

168. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

169. That the Court declare, adjudge, and decree that Defendants violated the California Labor Code by failing to pay all wages owed, including overtime, failure to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to pay final wages at termination, and failing to furnish accurate wage statements;

170. For all actual, consequential, and incidental losses and damages, according to proof;

171. For all civil penalties pursuant to California Labor Code §§ 2698, *et seq.*, and all other applicable Labor Code provisions;

172. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699; and

173. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

174. That the Court declare, adjudge, and decree that Defendants violated California Labor Code §§ 221, 222 and 223, the applicable IWC Wage Orders, and all other applicable statutes and contracts including collective bargaining agreements, which govern Defendants' obligation to timely pay "wages";

175. For general unpaid wages as may be appropriate;

176. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;

177. For liquidated damages;

178. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California

1 Labor Code § 1194(a); and

2 179. For such other and further relief as the Court may deem equitable and appropriate.

3 As to all Causes of Action

4 180. For any additional relief that the Court deems just and proper.

5 Dated:

Respectfully submitted,
MOON & YANG, APC

6
7
8 By: _____

KANE MOON
ROY K. SUH
LILIT TER-ASTVATSATRYAN

9
10 Attorneys for Plaintiffs KIMBERLY CARO and
11 BRENDA LESLIE

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs demand a trial by jury as to all causes of action triable by jury.

14 Dated:

MOON & YANG, APC

15
16 By: _____

KANE MOON
ROY K. SUH
LILIT TER-ASTVATSATRYAN

17
18 Attorneys for Plaintiffs KIMBERLY CARO and
19 BRENDA LESLIE

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EXHIBIT 1
(Draft Class Notice)

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Caro v. Kindred Healthcare Operating, LLC, et al.,
San Bernardino Superior Court, Case No. CIVDS2022513

**A COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION BY A LAWYER.
YOU ARE NOT BEING SUED.**

IF YOU ARE OR WERE EMPLOYED BY KINDRED HEALTHCARE OPERATING, LLC, THC-ORANGE COUNTY, LLC, OR KND DEVELOPMENT 53, LLC AS A NON-EXEMPT EMPLOYEE IN CALIFORNIA AT ANY TIME FROM AUGUST 1, 2016 TO [PRELIMINARY APPROVAL OR OTHER DATE], THEN THIS CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement” or “proposed Settlement”) has been reached in class and representative action entitled *Caro v. Kindred Healthcare Operating, LLC, et al.*, San Bernardino County Superior Court, Case No. CIVDS2022513 (the “Action”). The purpose of this Notice of Class and Representative Action Settlement (“Class Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action. A formal Settlement Agreement is filed with the Court, which you may request a copy of, as described below. If there are any material inconsistencies between this notice and the Settlement Agreement, then subject to Court review, the provisions in the Settlement Agreement shall control.

The Court has preliminarily approved the Settlement’s payment provisions and other terms and conditions described in this notice. The Honorable David S. Cohn shall finally determine whether the Settlement is fair, adequate, and reasonable and whether a Final Approval Order and a Final Judgment should be entered during a Final Approval Hearing at [FINAL APPROVAL HEARING DATE & TIME] in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415. Because the date and time of the Final Approval Hearing may change without further notice, you should contact the Settlement Administrator or Class Counsel for further updates.

IF YOU DO NOT SUBMIT A REQUEST FOR EXCLUSION TO BE EXCLUDED FROM OR “OPT-OUT” OF THE SETTLEMENT ON TIME AND THE COURT ENTERS A FINAL APPROVAL ORDER AND A FINAL JUDGMENT, THEN YOU MAY BE ENTITLED TO AN INDIVIDUAL SETTLEMENT PAYMENT AND MAY BE BOUND BY THE RELEASE OF THE “RELEASED CLAIMS” DESCRIBED IN THIS NOTICE.

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT

Do nothing	If you do nothing, then you will be considered part of the Settlement Classes and will receive settlement benefits as explained more fully below. You will also give up various rights to pursue a separate legal action against Defendant Kindred Healthcare Operating, LLC, Defendant THC – Orange County, LLC, and Defendant KND Development 53, LLC (“Defendants”) and any Released Parties based on any of the Released Claims.
Submit a Request for Exclusion to exclude yourself from or “Opt-Out” of the Settlement	If you do not want to participate in this Settlement, then you must submit a request for exclusion to exclude yourself from or “Opt-Out” of the Settlement, by writing to the Settlement Administrator by [RESPONSE DEADLINE]. If you choose to Opt-Out, then you will not receive any benefits under the Settlement nor will you release any claims against Defendants. If you qualify as a PAGA Employee, however, then you will still receive an Individual PAGA Employee Payment even if you choose to Opt-Out of the Settlement.
Object to the Settlement	If you wish to object to the Settlement, then you must write to the Settlement Administrator by [RESPONSE DEADLINE], about why you object to the Settlement. This option is available only if you do not Opt-Out of the Settlement.
Contest or dispute your Workweek or PAGA Pay Period credits	If you wish to contest or dispute the number of workweek or PAGA pay period credits the Settlement Administrator intends on assigning to you for the purpose of calculating your share of the Settlement funds, then you must write to the Settlement Administrator by [RESPONSE DEADLINE], about why you dispute the credits and provide supporting documentation that you possess to support your dispute.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following two class of persons (the “Settlement Classes”):

The Caro Settlement Class. All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC in California as an hourly, non-exempt employee at any time at any time from August 1, 2016 to [PRELIMINARY APPROVAL OR OTHER DATE] (the “Caro Class Period”), except for Defendant THC-Orange County, LLC’s employees who released claims pursuant to the settlement

reached in the lawsuit *Kirby v. Kindred Healthcare, Inc., et al.*, San Bernardino County Case No. CIVDS1708958 (“*Kirby* Class Action Lawsuit”) and who only worked prior to January 11, 2021 at THC Locations (“THC Locations” means Kindred Hospital – Brea, Kindred Hospital – Los Angeles, Kindred Hospital – Ontario, Kindred Hospital – San Francisco Bay Area, Kindred Hospital – San Diego, and Kindred Hospital – Westminster).

The Leslie Settlement Class. All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant KND 53 Development, LLC in California as an hourly, non-exempt employee at any time at any time from February 23, 2017 to [PRELIMINARY APPROVAL OR OTHER DATE] (the “*Leslie* Class Period”) at the KND Location (“KND Location” means Kindred Hospital – South Bay).

According to Defendants’ records, you are a member of the *Caro* Settlement Class and/or the *Leslie* Settlement Class (“Settlement Class Member”).

What is this Action about?

Plaintiffs Kimberly Caro and Brenda Leslie (“Plaintiffs” or “Named Plaintiffs”) filed the following two lawsuits alleging the following claims:

The Caro Class Action Lawsuit. Plaintiff Caro, individually, and on behalf of all others similarly situated, alleged Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide required meal periods; (4) failed to provide required rest periods; (5) failed to indemnify employees for necessary expenditures; (6) failed to furnish accurate itemized wage statements; (7) failed to pay timely and all wages due to discharged and quitting employees; (8) engaged in unfair and unlawful business practices under California Business and Professions Code; (9) and engaged in conduct giving rise to civil penalties pursuant to the California Labor Code Private Attorneys General Act (“PAGA”).

The Leslie Class Action Lawsuit. Plaintiff Leslie, individually, and on behalf of all others similarly situated, alleged Defendant Kindred Healthcare Operating, LLC and Defendant KND Development 53, LLC: (1) failed to pay minimum wages; (2) failed to pay overtime wages; (3) failed to provide required meal periods; (4) failed to provide required rest periods; (5) failed to indemnify employees for necessary expenditures; (6) failed to furnish accurate itemized wage statements; (7) failed to pay timely and all wages due to discharged and quitting employees; (8) engaged in unfair and unlawful business practices under California Business and Professions Code; (9) and engaged in conduct giving rise to civil penalties pursuant PAGA.

Plaintiffs’ claims in the *Caro* Class Action Lawsuit and the *Leslie* Class Action Lawsuit (collectively the “Lawsuits”) are now being alleged collectively against Defendants in this Action.

Plaintiffs believe this Settlement is in the best interests of all Settlement Class Members. Defendants deny all liability and are confident they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with continued litigation. Defendants contend their conduct is and has been lawful at all relevant times and that Plaintiffs’ claims do not have merit and do not meet the requirements for class certification. This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiffs and Defendant (the “Parties”). Considering the risks and expenses associated with continued litigation, the Parties agree this Settlement is fair, adequate, and reasonable.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendants’ defenses.

Who are the attorneys representing the Class?

The attorneys representing the Settlement Classes in the Action (“Class Counsel”) are: Kane Moon (Cal. SBN 249834) and Roy K. Suh (Cal. SBN 283988), and Lilit Ter-Astvatsatryan (Cal. SBN 320389) of Moon & Yang, APC, 1055 West Seventh Street, Suite 1880, Los Angeles, California 90017; Telephone: (213) 232-3128; Facsimile: (213) 232-3125.

What are the Settlement payment terms?

Gross Settlement Amount. The “Gross Settlement Amount” of \$2,400,000.00 includes: (1) the amount of all Individual Settlement Payments to Settlement Class Members who do not Opt-out (“Qualified Class Members”); (2) Settlement Administration Costs to the Settlement Administrator; (3) the PAGA LWDA Payment to the California Labor and Workforce Development Agency (“LWDA”); (4) Individual PAGA Employee Payments to PAGA Employees; (5) the Enhancement Awards to the Named Plaintiffs; (6) the Class Counsel Fee Award to Class Counsel; and (7) the Class Counsel Cost Award to Class Counsel.

Net Settlement Amount. The “Net Settlement Amount” is currently estimated to be \$1,365,000.00. The Net Settlement Amount is subject to a final accounting and will be the amount remaining for disbursement to Qualified Class Members after the following amounts are deducted from Gross Settlement Amount: (1) Settlement Administration Costs estimated not to exceed \$30,000.00 to the Settlement Administrator; (2) the \$112,500.00 PAGA LWDA Payment to the LWDA; (3) the \$37,500.00 aggregate PAGA Employee Payment to PAGA Employees; (4) the \$20,000.00 Enhancement Awards (\$10,000.00 each) to the Named Plaintiffs; (5) the greater of \$800,000.00 or one-third (1/3) of the Gross Settlement Amount as a Class Counsel Fee Award to Class Counsel; and (6) and a Class Counsel Cost Award not to exceed \$35,000.00 to Class Counsel.

Individual Settlement Payments to Qualified Class Members. The Settlement Administrator shall disburse Individual Settlement Payments from the estimated \$1,365,000.00 Net Settlement Amount to Qualified Class Members based on the workweek credits assigned to them. Individual Settlement Payments shall be characterized as twenty percent (20%) wages, subject to IRS Form W-2 reporting, and eighty percent (80%) non-wages, subject to IRS Form 1099 reporting. The Settlement Administrator shall deduct applicable local, state and federal taxes from the wage portion of the Individual Settlement Payments only.

Individual PAGA Employee Payments to PAGA Employees. If you are a member of the *Caro* Settlement Class and you worked as an hourly non-exempt employee for Defendants in California at any time at the THC Locations from October 9, 2019 to [PRELIMINARY APPROVAL OR OTHER DATE] (the “*Caro* PAGA Period”) or if you are a member of the *Leslie* Settlement Class and you worked as an hourly non-exempt employee for Defendants in California at any time at the KND Location from February 23, 2020 to [PRELIMINARY APPROVAL OR OTHER DATE] (the “*Leslie* PAGA Period”), then you may also be a PAGA Employee. The Settlement Administrator shall disburse Individual PAGA Employee Payments from the \$37,500.00 aggregate PAGA Employee Payment to PAGA Employees based on the pay period credits assigned to them. Individual PAGA Employee Payments shall be characterized as 100% non-wages, subject to IRS Form 1099 reporting.

PAGA Employees Cannot Opt-out of the “PAGA Component” of the Settlement. If you are a PAGA Employee and the Settlement becomes final, then you will be entitled to an Individual PAGA Employee Payment even if you choose to Opt-out of the Class component of the Settlement. This is because Individual PAGA Employee Payments do not constitute consideration offered or exchanged for the release of any Settlement Class Members’ individual, private rights of action. In other words, PAGA Employees cannot opt-out of the PAGA component of the Settlement but they can still preserve their individual, private rights to sue Defendants for any of the Released Claims as long as they Opt-out the “Class component” of the Settlement on time.

Checks Void at 180 Days & Transfer to the Unclaimed Property Fund. If Settlement becomes final, then the Settlement Administrator shall mail Individual Settlement Payment and Individual PAGA Employee Payment checks no sooner than 75 days thereafter. If any Individual Settlement Payment or Individual PAGA Employee Payment checks remain uncashed 180 days after the Settlement Administrator’s initial bulk mailing, then the uncashed checks will become void and transferred to the State of California’s State Controller Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each Settlement Class Member and PAGA Employee.

No Tax Advice. Parties and their attorneys make no representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning any tax consequences of payments to any Class Member.

How much money should you expect as an Individual Settlement Payment and Individual PAGA Employee Payment?

Individual Settlement Payment Calculations. Each Qualified Class Member’s share of the Net Settlement Amount will be proportional to (based on a percentage of) the number of workweeks he, she or they worked and are credited with during the *Leslie* Class Period and/or *Caro* Class Period, and the point values allocated to workweek credits he, she or they receive.

- **100-Points for Each Caro/Leslie-Workweek Credit.** All Qualified Class Members will receive 100 points for every *Caro/Leslie-Workweek* he, she or they worked and that the Settlement Administrator individually credits them with during the *Leslie* Class Period and/or *Caro* Class Period.¹
- **20-Points for Each Song-Workweek Credit.** All Qualified Class Members will receive 20 points for every *Song-Workweek* he, she or they worked and that the Settlement Administrator individually credits them with during the *Caro* Class Period.²
- **Net Settlement Amount Share Calculation Formula.** Each Qualified Class Member’s share of the Net Settlement Amount will be calculated based on a percentage of their workweek points according to the following formula: Each Qualified Class Member’s total points per workweek credited ÷ All Qualified Class Members’ total points for all workweeks credited × Net Settlement Amount = Share of Net Settlement Amount.

Workweek Credits. The Settlement Administrator shall credit each individual Qualified Class Member with a single workweek credit for every calendar week that the individual Qualified Class Member worked at least one day, as Defendants’ employee in the state of California during the *Caro* Class Period and/or the *Leslie* Class Period. Defendants estimate Settlement Class Members worked for Defendants during 297,268 *Caro/Leslie-Workweeks* and 182,372 *Song-*

¹ *Caro/Leslie-Workweeks* include all workweeks work in the *Caro* Class Period and the *Leslie* Class Period but excludes the *Song-Workweeks* and any workweeks released under the *Kirby* Class Action Lawsuit.

² *Song-Workweeks* include the workweeks worked by *Caro* Settlement Class Members between August 1, 2016 and February 28, 2019 and covered by the *Song* Class Action Lawsuit, which only released claims pertaining to (a) failure to pay minimum wage and overtime wages, (b) derivative wage statement penalties, (c) derivative waiting time penalties, and (d) PAGA penalties.

Workweeks, for a total of approximately 479,640 overall workweeks covered under the Settlement.

Individual PAGA Employee Payment Calculations. The Settlement Administrator shall determine Individual PAGA Employee Payment amounts by (1) crediting individual PAGA Employees with the total number of 14-day pay periods each individual PAGA Employee worked during the *Caro* PAGA Period, which were not released as part of the settlement in the *Kirby* Class Action Lawsuit, and/or the *Leslie* PAGA Period; (2) dividing the total number of all PAGA Employees' pay periods by the individual PAGA Employee's pay periods credited, resulting in the individual PAGA Employee's pro rata share of the PAGA Employee Payment; and (3) multiplying the individual PAGA Employee's pro rata share of the PAGA Employee Payment by the monetary value of the PAGA Employee Payment.

PAGA Pay Period Credits. The Settlement Administrator shall credit each individual PAGA Employee with a single pay period credit for every 14-day pay period that the individual PAGA Employee worked at least one day as Defendants' employee in the state of California during the *Caro* PAGA Period and/or the *Leslie* PAGA Period.

Your Preliminarily Assigned Workweeks and PAGA Pay Periods and Estimated Individual Settlement Payment and Individual PAGA Employee Payment. Defendants have provided the Settlement Administrator with the number of *Song* Workweeks and *Caro/Leslie*-Workweeks worked by Settlement Class Members during the *Caro* Class Period and the *Leslie* Class Period, and the PAGA Pay Periods worked by PAGA Employees during the *Caro* PAGA Period and the *Leslie* PAGA Period. Based on Defendants' records, the Settlement Administrator intends on crediting you with the following workweek and PAGA pay period credits:

<<Total *Song*-Workweeks>> *Song*-Workweek Credits

<<Total *Caro/Leslie*-Workweeks>> *Caro/Leslie*-Workweek Credits

<<Total PAGA Pay Periods>> PAGA Pay Period Credits

Based on your total numbers of *Song*-Workweeks, *Caro/Leslie*-Workweeks, and PAGA Periods, **your estimated Individual Settlement Payment and estimated Individual PAGA Employee Payment are:**

<<EstSettPayment>> **Estimated Individual Settlement Payment**

<<EstPAGAPayment>> **Estimated Individual PAGA Employee Payment**

Please note that the foregoing amounts are only estimates before a final accounting is conducted and before all required legal deductions; your actual payment may be greater or smaller than the amount reported above.

Who are the Released Parties and what claims will be released by the proposed Settlement's Released Claims?

The Effective Date of the Settlement. The "Effective Date" is the date that the Settlement Classes are served notice of the Court's entry of a Final Judgment in the manner specified by the Court and (i) sixty-five (65) days after the Court enters Final Judgment and no appeal, writ or other challenge to the finality of the judgment has been filed; or (ii) five (5) days after the day when all appeals, writs or other challenges to the Final Judgment have been resolved in a manner that affirms the finality of the judgment and the time for the filing of any further appeals, writs or other challenges has lapsed, whichever date is later.

Qualified Class Members' Release of Released Claims Against Released Parties. If the Effective Date occurs and Defendants remit the Gross Settlement Amount in full to the Settlement Administrator, then Plaintiffs and each Qualified Class Member shall be deemed to have fully, finally, and forever released the Released Parties of the Released Claims as alleged in the "Operative Complaint" ("Operative Complaint" means the *Caro* Fourth Amended Complaint) in the Action:

- The "Released Parties" means Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including but not limited to Scion Health, Kindred Healthcare, LLC, Kindred Healthcare, Inc., Kindred Healthcare Operating, LLC, Kindred Healthcare Operating, Inc., KND Development 53, LLC, THC-Orange County, Inc., and THC-Orange County, LLC as well as each of their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity who could be jointly liable with Defendants for any of the Released Claims.
- The "Released Claims" means the claims alleged in the Lawsuits and set forth in the Operative Complaint, specifically, (1) Failure to pay minimum and regular rate wages; (2) Failure to pay overtime compensation; (3) Failure to provide meal periods or provide premiums in lieu thereof; (4) Failure to provide rest periods or provide premiums in lieu thereof; (5) Failure to pay timely wages at termination; (6) Failure to provide accurate itemized wage statements; (7) Violation of Business and Professions Code §§ 17200, *et seq.*; (8) Failure to reimburse for necessary business expenses; (9) Failure to pay wages due as agreed upon under statute or contract; and (10) Violation of the California Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*), and those claims predicated on the same or similar facts and/or claims alleged in the Lawsuits and/or any PAGA letter sent to the LWDA by Named Plaintiffs in or prior to the Lawsuits, as well as any claims that could have been pled which arise from the same or similar facts concerning the Named Plaintiffs or the putative class, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code and California Industrial

Welfare Commission Wage Orders (specifically for violations of Labor Code sections 201, 201.3, 201.5, 201.6, 201.9, 202, 202, 203, 204, 204.1, 204.2, 205.5, 206.5, 210, 221, 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 245, 245.8, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, *et seq.*, 1197.1, 1198, 1199, 2699, 2802, and applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11000, *et seq.*; or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Lawsuits; any claims for injunctive relief, declaratory relief, restitution, alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the Lawsuits; and any and all other claims under California common law, the federal law, and the California Business and Professions Code alleged in or that could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Lawsuits and based on the alleged Labor Code violations.

- o The Released Claims ***shall not include*** the claims pertaining to (a) failure to pay minimum and overtime wages, (b) failure to provide compliant meal and rest periods, (c) failure to reimburse business expenses, (d) derivative waiting time penalties, (e) derivative wage statement penalties, and (f) PAGA penalties previously released by Settlement Class Members as part of the previously settled and adjudged *Kirby* Class Action Lawsuit for the period between August 1, 2016 and January 11, 2021. (“*Kirby* Class Action Lawsuit” means the action entitled *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino Superior Court, Case No. CIVDS1708958, and resulted in a finally adjudged settlement.)
- o The Released Claims ***shall not include*** the claims pertaining to (a) failure to pay minimum wage and overtime wages, (b) derivative wage statement penalties, (c) derivative waiting time penalties, and (d) PAGA penalties previously released by Settlement Class Members as part of the previously settled and adjudged *Song* Class Action Lawsuit for the period between October 13, 2016 and February 28, 2019. (“*Song* Class Action Lawsuit” shall mean the action entitled *Emmy Song v. THC-Orange County, Inc.*, which was pending in the United States District Court for the Central District of California, Case No. 8:17-cv-00965-JLS-DFMx, and resulted in a finally adjudged settlement.)

California’s Release and PAGA Employees’ Release of PAGA Claims Against Released Parties. If the Effective Date occurs and Defendants remit the Gross Settlement Amount in full to the Settlement Administrator, then the State of California, by and through Plaintiffs, its deputized PAGA representatives and all PAGA Employees, shall be deemed to have fully, finally, and forever released the Released Parties of the PAGA Claims as alleged in the Operative Complaint.

- The “PAGA Claims” means the claims as alleged in the Operative Complaint arising from PAGA that were premised on the claims, causes of action, or legal theories of relief alleged in Plaintiff Caro’s October 9, 2020 PAGA notice to the LWDA and Defendants in LWDA Case No. LWDA-CM-809234-20, as amended, and alleged in Plaintiff Leslie’s February 22, 2021 PAGA notice to the LWDA and Defendants in LWDA Case No. LWDA-CM-822384-21, as amended, and that were alleged or reasonably could have been alleged based on the facts asserted in the Operative Complaint in the Action including, but not limited to, violations of the California Labor Code and California Industrial Welfare Commission Wage Orders.

What are my options in this matter?

Settlement Class Members’ Four Options and Communications with the Settlement Administrator & Class Counsel.

You have four (4) options under this Settlement. You may: (1) do nothing and remain in the Settlement Classes and receive an Individual Settlement Payment; (2) submit a request for exclusion to exclude yourself from or “Opt-Out” of the Settlement; (3) object to the Settlement; and (4) contest or dispute your Workweek or PAGA Pay Period credits. All Opt-Out Requests, Objections, and Workweek/PAGA Pay Period Disputes must be submitted to the Settlement Administrator at: Settlement Administrator for *Caro v. Kindred Healthcare Operating, LLC, et al.*, P.O. Box [redacted], [City], [State] [Zip] by United States Mail, facsimile and/or in other written form by no later than [RESPONSE DEADLINE DATE]. The Settlement Administrator is authorized to communicate with you if you exercise any of these options under this Settlement. Additionally, unless you clearly state that you do not wish to be contacted by Class Counsel, Class Counsel may contact you to resolve any uncertainties about the validity of any Opt-Out Requests, Objections or Workweek/PAGA Pay Period Disputes you submit.

OPTION 1. (Do Nothing). If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment under the proposed Settlement, then **you do not need to take any action and you do not need to submit a claim form.** If you do nothing (for example, if you do not submit timely and valid Opt-Out Request), then you will remain in the Settlement Classes, Class Counsel will represent you for the purposes of this Settlement at no direct cost and you will be deemed to have consented to release the Released Claims described above.

OPTION 2. (Submit a Request for Exclusion to Request to Exclude Yourself from or “Opt-Out” of the Settlement).

If you do not want to be part of the proposed Settlement, then you must submit a timely and valid written request for exclusion or Opt-Out Request to the Settlement Administrator by [RESPONSE DEADLINE DATE] in the following manner: (1) your written request for exclusion must state your full name, address, telephone number, and social security number or employee identification number; (2) your written request for exclusion must state your intention to exclude yourself from or desire to opt-out of the Settlement (e.g. “I want to exclude myself from this settlement. I also understand

that I retain all rights to sue the Defendants for the claims asserted in this lawsuit.”); (3) your written request for exclusion must be addressed to the Settlement Administrator; (4) your written request for exclusion must be signed by you or your lawful representative; and (5) your written request for exclusion must be postmarked no later than forty-five (45) calendar days from the mailing of the Class Notice.

If you submit a timely and valid written Opt-Out Request, then you will have no further role in the Action, you will not be entitled to any benefit (except for being entitled to an Individual PAGA Employee Payment, if you qualify) under the proposed Settlement and you may not be entitled or permitted to assert or raise an objection to the Settlement.

If you do not submit an Opt-Out Request in the manner described above in time, then the Court may determine that you have not opted out, you may be deemed a Qualified Class Member and you may be bound by the release of Released Claims as described above and all other terms of the Settlement. Subject to review by Class Counsel, Defendants’ Counsel and the Court, the Settlement Administrator shall determine whether an Opt-Out Request is in writing and whether the writing lacks any of the five (5) enumerated characteristics stated above, which may render the request null and void.

OPTION 3. (Object to the Settlement). If you wish to object to the settlement, then you may object to it by submitting a timely and written Objection to the Settlement Administrator by [RESPONSE DEADLINE DATE] in the following manner: (1) your objection must state your full name, address, telephone number, and social security number or employee identification number; (2) your objection must describe, in clear and concise terms, the legal and factual arguments supporting your objection; (3) your objection must include a list identifying witness(es) you may call to testify at the Final Approval Hearing; (4) your objection must include true and correct copies of any exhibit(s) you intend to offer at the Final Approval Hearing; (5) your objection must include your statement about whether your objection applies only to you, to a specific subset of the Settlement Classes, or to the entirety of the Settlement Classes; (6) your written objection must be addressed to the Settlement Administrator; (7) your written objection must be signed by you or your lawful representative; and (8) your objection must be postmarked no later than forty-five (45) calendar days from the mailing of the Class Notice. Class Counsel shall not represent you or assist you in objecting to the Settlement. However, you may hire an attorney at your own expense to represent you in your objection.

If Court finally approves the Settlement despite any objections, then you may and will likely be bound by the terms of the Settlement including the release of Released Claims as set forth above.

If you do not submit an objection in the manner described above in time, then the Court may determine that you have waived any objections and may not allow you to make any objection (whether by appeal or otherwise) to the proposed Settlement. Subject to review by Class Counsel, Defendants’ Counsel and the Court, the Settlement Administrator shall determine whether an objection is in writing and whether the writing lacks any of the eight (8) enumerated characteristics stated above, which may render the objection null and void.

OPTION 4. (Contest or Dispute Your Workweek or PAGA Pay Period Credits). If you disagree with the number of workweek or PAGA pay period credits you have been assigned above, then you must submit a timely and valid written workweek PAGA pay period dispute to the Settlement Administrator by [RESPONSE DEADLINE DATE] in the following manner: (1) your workweek or PAGA pay period dispute must state your full name, address, telephone number, and social security number or employee identification number; (2) your workweek or PAGA pay period dispute must state your dates of employment; (3) your workweek or PAGA pay period dispute must include **your statement indicating the number of workweeks and/or PAGA pay periods that you contend should be credited along with documentary evidence to support your contentions, if any;** (4) your workweek or PAGA pay period dispute must be signed by you or your lawful representative; and (5) your workweek or PAGA pay period dispute must be postmarked no later than forty-five (45) calendar days from the mailing of the Class Notice.

If you do not submit a workweek/PAGA pay period dispute in the manner described above in time, then the Court may determine that you have waived any challenge to the workweek or PAGA pay period credits you have been assigned. Subject to review by Class Counsel, Defendants’ Counsel and the Court, the Settlement Administrator shall determine whether a workweek/PAGA pay period dispute is in writing and whether the writing lacks any of the five (5) enumerated characteristics stated above, which may render the workweek/PAGA pay period dispute null and void.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing [FINAL APPROVAL HEARING DATE & TIME] in Department S26 of the San Bernardino County Superior Court, located at located at 247 West Third Street, San Bernardino, California 92415 regarding the fairness, reasonableness and adequacy of the proposed Settlement. The Final Approval Hearing may be rescheduled without further notice to Class Members. **You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.**

If the Court grants final approval of the Settlement, then notice of the Final Judgment may be provided by electronic posting on the Settlement Administrator’s website (www.) within seven (7) calendar days after entry of the Final Judgment or in another manner other than direct mailing or notice to you.

How can I get additional information?

This Class Notice summarizes the Action and the basic terms of the Settlement. More details are in the Stipulation of Class and Representative Action Settlement, which, along with other records in the Action, may be available for inspection and/or copying during regular business hours at the Court Clerk's Office or by visiting the Court's Court Access Portal website or webpage at: <https://cap.sb-court.org/search>. Please visit the Court's website for more information about accessing case related documents. You may also request a copy of the Settlement Agreement from Class Counsel, or contact Class Counsel with any questions, at the addresses and telephone numbers listed above.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

[FURTHER WITHHOLDINGS NOTICE]

The Settlement Administrator has identified you as a Class Member but has been unable to verify your social security number or tax identification number. If you do not complete the IRS Form W-9 enclosed with this Notice and return it to the Settlement Administrator, the Settlement Administrator may deduct additional withholdings from your Individual Settlement Payment. If you have any questions or concerns about completing and returning the enclosed IRS Form W-9, you may contact the Settlement Administrator to discuss other available options to verify your social security number or tax identification number.

[NEXT PAGE – IRS FORM W-9]

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EXHIBIT 2
(Draft Preliminary
Approval Order)

1 Kane Moon (Cal. SBN 249834)
kane.moon@moonyanglaw.com
 2 Roy K. Suh (Cal. SBN 283988)
roy.suh@moonyanglaw.com
 3 Lilit Ter-Astvatsatryan (Cal. SBN 320389)
lilit@moonyanglaw.com
 4 **MOON & YANG, APC**
 1055 West Seventh Street, Suite 1880
 5 Los Angeles, California 90017
 Telephone: (213) 232-3128
 6 Facsimile: (213) 232-3125

7 Attorneys for Plaintiffs KIMBERLY CARO and
 BRENDA LESLIE

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN BERNARDINO – CENTRAL JUSTICE CENTER**

11 KIMBERLY CARO, individually, and on behalf of
 all others similarly situated, and BRENDA
 12 LESLIE, individually, and on behalf of all others
 similarly situated,

13 Plaintiffs,

14 v.

15 KINDRED HEALTHCARE OPERATING, LLC,
 16 a Delaware corporation; THC – ORANGE
 COUNTY, LLC, a limited liability company; KND
 17 DEVELOPMENT 53, LLC, a limited liability
 company; and DOES 1 through 10, inclusive,

18 Defendants.

Case No. CIVDS2022513

*Assigned for all purposes to the Honorable David
 Cohn, Department S26*

**[PROPOSED] ORDER GRANTING
 PRELIMINARY APPROVAL OF THE JOINT
 STIPULATION AND SETTLEMENT
 AGREEMENT OF CLASS ACTION AND
 REPRESENTATIVE ACTION CLAIMS**

Prelim. Approval Hearing Date: June 7, 2023
 Time: 10:00 a.m.
 Department: S26

PAGA Case No.
 LWDA-CM-809234-20: Oct. 9, 2020
 Action Filed: Oct. 13, 2020
 FAC Filed: Dec. 23, 2020
 SAC Filed: Mar. 20, 2022
 TAC Filed: Dec. 1, 2022
 Trial Date: None Set

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL

Plaintiffs' unopposed Motion for Preliminary Approval of the Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims ("Motion") came before this Court on [PRELIMINARY APPROVAL HEARING DATE & TIME] in *Caro, et al. v. Kindred Healthcare Operating, LLC, et al.*, San Bernardino County Superior Court, Case No. CIVDS2022513 (the "Action"). The Court, having reviewed the Motion and declarations filed in support thereof, including the Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims ("Settlement Agreement") attached as **Exhibit A** to the Declaration of Roy K. Suh, the Notice of Class and Representative Action Settlement ("Class Notice"), which is attached as **Exhibit 1** to the Settlement Agreement and for GOOD CAUSE appearing, the Court hereby ORDERS:

1. The Court GRANTS preliminary approval of the Settlement Agreement and finds its terms to be within the range of reasonableness of a settlement that ultimately could be granted final approval by the Court at the Final Approval Hearing. For purposes of the settlement, the Court finds that the proposed Settlement Classes are ascertainable and that there is a sufficiently well-defined community of interest among the Settlement Classes in questions of law and fact. Therefore, for settlement purposes only, the Court grants conditional certification of the "Settlement Classes" defined as follows:

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC in California as an hourly, non-exempt employee at any time at any time from August 1, 2016 to [PRELIMINARY APPROVAL OR OTHER DATE] (the "*Caro* Class Period"), except for Defendant THC-Orange County, LLC's employees who released their claims as part of the finally adjudged settlement in *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino Superior Court, Case No. CIVDS1708958 and who only worked prior to January 11, 2021.

and

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant KND 53 Development, LLC in California as an hourly, non-exempt employee at any time at any time from February 23, 2017 to [PRELIMINARY APPROVAL OR OTHER DATE] (the "*Leslie* Class Period").

The Court further notes that the PAGA release component of the proposed Settlement shall potentially bind the State of California with respect to the following persons:

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC in California as an hourly, non-exempt employee at any time at any time from to October 13, 2019 to [PRELIMINARY APPROVAL OR OTHER DATE] (the “Caro PAGA Period”), except for Defendant THC-Orange County, LLC’s employees who released their claims as part of the finally adjudged settlement in *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino Superior Court, Case No. CIVDS1708958 and who only worked prior to January 11, 2021.

and

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant KND Development 53, LLC in California as an hourly, non-exempt employee at any time at any time from to February 23, 2020 to [PRELIMINARY APPROVAL OR OTHER DATE] (the “Leslie PAGA Period”).

2. For settlement purposes only, the Court designates Plaintiffs Kimberly Caro and Brenda Leslie as Class Representatives.

3. For settlement purposes only, the Court appoints Kane Moon, Roy K. Suh, and Lilit Ter-Astvatsatryan of Moon & Yang, APC, as Class Counsel.

4. The Court appoints [Settlement Administrator – TBD] as the Settlement Administrator.

5. A Final Approval Hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate is scheduled in Department S26 of this Court, located at 247 West Third Street, San Bernardino, California 92415 at _____ a.m./p.m. _____.

6. At the Final Approval Hearing, the Court shall consider: (a) whether the Settlement should be finally approved as fair, reasonable, and adequate for Settlement Class Members; (b) whether an order granting final approval of the settlement and a final judgment should be entered; and (c) whether Plaintiffs’ applications for Enhancement Awards and an award of attorney’s fees and costs should be granted.

7. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval and an award of attorney’s fees and costs by no later than _____.

8. The Court approves, as to form and content, the Class Notice attached as **Exhibit 1** to the Settlement Agreement. The Court finds that the forms of notice to the Settlement Class Members regarding

the pendency of the Action and of the proposed Settlement and the methods of giving notice to members of the Class constitute the best notice practicable under the circumstances and constitute valid, due, and sufficient notice to all members of the Settlement Classes. The class notice administration process complies with the requirements of California Code of Civil Procedure section 382, California Civil Code section 1781, California Rules of Court, rules 3.766 and 3.769, the California and United States Constitutions and other applicable law. The Court further approves the procedures for Settlement Class Members to opt out of or object to the proposed Settlement, as set forth in the Settlement Agreement and the Class Notice.

9. The Court orders the Parties to carry out the class notice administration process for the proposed Settlement according to the terms of the Settlement Agreement and authorizes the Parties to utilize all reasonable procedures to effectuate those ends, which are materially consistent with this Order and the Settlement Agreement.

10. Pending the Final Approval Hearing, all proceedings in the Action, other than those necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order, are stayed. To facilitate class notice administration pending the Final Approval Hearing, the Court hereby enjoins all Settlement Class Members from filing or prosecuting any claims, suits, or proceedings regarding claims released under the proposed Settlement pending in this Department until such Class Settlement Members have submitted valid Opt-Out Requests with the Settlement Administrator.

11. The Court orders the following implementation schedule for further proceedings:

<u>Event</u>	<u>Timing</u>
Last day for Defendants to provide Class Member List to the Settlement Administrator.	_____ [date] 0 preliminary approval date + 45 days to provide Class Member List 45 days after preliminary approval date
Last day for the Settlement Administrator to mail Class Notices to Settlement Class Members in bulk.	_____ [date] 45 days after preliminary approval date + 14 days after Class Member List receipt 59 days after preliminary approval date

<u>Event</u>	<u>Timing</u>
Last day for Settlement Class Members to postmark or submit Workweek/PAGA Pay Period Disputes, Opt-Out Requests, and Objections (“Response Deadline”).	_____ [date] 59 days after preliminary approval date + 45 days after Class Notice mailing 104 days after preliminary approval date
Last day for Affected Settlement Class Members to whom the Settlement Administrator re-mails Class Notices to postmark or submit Workweek/PAGA Pay Period Disputes, Opt-Out Requests, and Objections (extended “Response Deadline”).	_____ [date] 104 days after preliminary approval date + 15 days after Response Deadline 119 days after preliminary approval date
Last day for Settlement Administrator to provide Parties with list of all Settlement Class Members who submitted valid Workweek/PAGA Pay Period Disputes, Opt-Out Requests, and Objections.	_____ [date] 119 days after preliminary approval date + 10 days after extended Response Deadline 129 days after preliminary approval date
Last day for Plaintiffs to file a motion and supporting documents for final approval of class action settlement.	_____ [date] (16 court days before Final Approval Hearing)
Last day for the Parties to file any response to the objections submitted by Objecting Class Members in advance of the Final Approval Hearing.	_____ [date] (Seven (7) days before Final Approval Hearing)
Final Approval Hearing.	_____ [time] _____ [date] 129 days after preliminary approval date + 30 days after extended Response Deadline 159 days after preliminary approval date

12. The Final Approval Hearing and related deadlines set forth above may, from time to time and without further notice to the Class (except those who have filed timely and valid objections), be continued or adjourned by Order of the Court.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE DAVID S. COHN
Judge of The Superior Court

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EXHIBIT 3
(Draft Final Approval
Order)

1 Kane Moon (Cal. SBN 249834)
kane.moon@moonyanglaw.com
2 Roy K. Suh (Cal. SBN 283988)
roy.suh@moonyanglaw.com
3 Lilit Ter-Astvatsatryan (Cal. SBN 320389)
lilit@moonyanglaw.com
4 **MOON & YANG, APC**
1055 West Seventh Street, Suite 1880
5 Los Angeles, California 90017
Telephone: (213) 232-3128
6 Facsimile: (213) 232-3125

7 Attorneys for Plaintiffs KIMBERLY CARO and
8 BRENDA LESLIE

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN BERNARDINO – CENTRAL JUSTICE CENTER**

11 KIMBERLY CARO, individually, and on behalf of
all others similarly situated, and BRENDA
12 LESLIE, individually, and on behalf of all others
similarly situated,

13 Plaintiffs,

14 v.

15 KINDRED HEALTHCARE OPERATING, LLC,
16 a Delaware corporation; THC – ORANGE
COUNTY, LLC, a limited liability company; KND
17 DEVELOPMENT 53, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

18 Defendants.

Case No. CIVDS2022513

*Assigned for all purposes to the Honorable David
Cohn, Department S26*

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF THE JOINT STIPULATION
AND SETTLEMENT AGREEMENT OF
CLASS ACTION AND REPRESENTATIVE
ACTION CLAIMS**

Final Approval Hearing Date: [Date]
Time: [Time]
Department: S26

PAGA Case No.
LWDA-CM-809234-20: Oct. 9, 2020
Action Filed: Oct. 13, 2020
FAC Filed: Dec. 23, 2020
SAC Filed: Mar. 20, 2022
TAC Filed: Dec. 1, 2022
Trial Date: None Set

[PROPOSED] ORDER GRANTING FINAL APPROVAL

Plaintiff's unopposed Motion for Final Approval of the Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims ("Motion") came before this Court on [FINAL APPROVAL HEARING DATE & TIME] in *Caro, et al. v. Kindred Healthcare Operating, LLC, et al.*, San Bernardino County Superior Court, Case No. CIVDS2022513 (the "Action"). The Court, having fully reviewed the Motion and declarations and exhibits filed in support thereof, as well as the records and documents on file in the Action including the Stipulation of Class and Representative Action Settlement ("Settlement Agreement") attached as **Exhibit A** to the Declaration of Roy K. Suh, the Notice of Class Action Settlement ("Class Notice"), which is attached as **Exhibit 1** to the Declaration of [TPA - TBD] and for and for GOOD CAUSE appearing, the Court hereby ORDERS:

1. The Court GRANTS final approval of the Settlement Agreement and finally finds its terms to be within the range of reasonableness of a settlement. For purposes of the settlement, the Court finally finds that the Settlement Classes are ascertainable and that there is a sufficiently well-defined community of interest among the Settlement Classes in questions of law and fact. Therefore, for settlement purposes only, the Court finally grants certification of the "Settlement Classes" defined as follows:

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC in California as an hourly, non-exempt employee at any time at any time from August 1, 2016 to [PRELIMINARY APPROVAL OR OTHER DATE] (the "*Caro* Class Period"), except for Defendant THC-Orange County, LLC's employees who released their claims as part of the finally adjudged settlement in *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino Superior Court, Case No. CIVDS1708958 and who only worked prior to January 11, 2021.

and

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant KND 53 Development, LLC in California as an hourly, non-exempt employee at any time at any time from February 23, 2017 to [PRELIMINARY APPROVAL OR OTHER DATE] (the "*Leslie* Class Period").

The Court further notes that the PAGA release component of the Settlement shall bind the State of California with respect to the following persons:

All current and former hourly non-exempt employees who worked for

1 Defendant Kindred Healthcare Operating, LLC and Defendant THC –
2 Orange County, LLC in California as an hourly, non-exempt employee at
3 any time at any time from to October 13, 2019 to [PRELIMINARY
4 APPROVAL OR OTHER DATE] (the “Caro PAGA Period”), except for
5 Defendant THC-Orange County, LLC’s employees who released their
6 claims as part of the finally adjudged settlement in *Michael Kirby, et al.,*
7 *v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San
8 Bernardino Superior Court, Case No. CIVDS1708958 and who only
9 worked prior to January 11, 2021.

10 and

11 All current and former hourly non-exempt employees who worked for
12 Defendant Kindred Healthcare Operating, LLC and Defendant KND
13 Development 53, LLC in California as an hourly, non-exempt employee
14 at any time at any time from to February 23, 2020 to [PRELIMINARY
15 APPROVAL OR OTHER DATE] (the “Leslie PAGA Period”).

16 2. Pursuant to Code of Civil Procedure section 382, Rule 3.769 of the California Rules of
17 Court and Labor Code §§ 2698, *et seq.* (“PAGA”) the Court grants final approval of the Settlement as set
18 forth in the Settlement Agreement for settlement purposes only.

19 3. The Court finds that Plaintiffs Kimberly Caro and Brenda Leslie have adequately
20 represented the Settlement Classes and finally appoints them as Class Representatives.

21 4. The Court finds that Kane Moon, Roy K. Suh, and Lilit Ter-Astvatsatryan of Moon &
22 Yang, APC of Moon & Yang, APC, have adequately represented the Settlement Classes and finally
23 appoints them as Class Counsel.

24 5. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate to the
25 Class when balanced against the probable outcome of extensive and costly litigation. Substantial
26 investigation and research have been conducted such that counsel for the Parties are reasonably able to
27 evaluate their respective positions. It appears to the Court that Settlement will avoid substantial additional
28 costs by all parties, as well as the delay and risk that would be presented by further prosecution of the
Action. The Court finds that the Settlement that has been reached is the result of intensive, non-collusive,
arm’s-length negotiations.

6. The Court determines that the Parties complied with the distribution of the Class Notice to
the Settlement Classes in the manner and form set forth in the Preliminary Approval Order and that, as a
result, the Class Notice provided to the Settlement Class Members was the best notice practicable under
the circumstances, constituted due and sufficient notice to all persons entitled to such notice and that all

absent Settlement Class Members have been given the opportunity to participate fully in the claims exclusion and the approval process.

7. [Settlement Administrator - TBD], the Court-appointed Settlement Administrator has received _____ Workweek/PAGA Pay Period Disputes regarding the calculations of Settlement Class Members' credited workweeks or PAGA pay periods. The Settlement Administrator has, furthermore, received _____ Objections and _____ Opt-Out Request to the Settlement (i.e., "Opt Outs") in response to the Class Notice. Accordingly, all Class Members shall be bound by the terms of the Settlement.

8. Plaintiffs and all Settlement Class Members ("Qualified Class Members"), shall have, by operation of this Order and the accompanying Judgment, fully, finally, and forever released, relinquished, and discharged Released Parties from all Released Claims as set forth in the Settlement Agreement. Unless upon an extraordinary showing of good cause, Qualified Class Members shall be forever barred and enjoined from prosecuting any of the Released Claims against the Released Parties as set forth in the Settlement Agreement, whether or not they actually receive or cash Individual Settlement Payment checks and shall not be entitled to any further payment or any personal relief of any kind from any Released Parties including any payment for damages, wages, compensation, commissions, fees, costs, reimbursements, penalties, or interest on account of the Released Claims. If a Qualified Class Member fails to receive or cash his or her Individual Settlement Payment check, then the affected Qualified Class Member shall be deemed bound nonetheless.

9. The State of California, by and through Plaintiffs and PAGA Representatives Kimberly Caro and Brenda Leslie, shall, by operation of this Order and the accompanying Judgment, fully, finally, and forever released, relinquished, and discharged Released Parties from all PAGA Claims set forth in the Settlement Agreement as they relate to the release of PAGA Claims.

10. The Settlement is not an admission by Defendants of the merits of any claim in the Action or of any wrongdoing. Neither the Settlement Agreement, nor any document referenced therein, nor any action taken to carry out this Settlement Agreement, shall be (a) construed as or used as an admission of liability or an admission that any of Defendants' defenses in the Action are with or without merit, or (b) disclosed, referred to, or offered in evidence against Defendants in any further proceeding except for purposes of effectuating the Settlement. However, the Settlement may be admitted in evidence and

1 otherwise used in any proceeding to enforce its terms, or in defense of any claims released or barred by
2 the Settlement.

3 11. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate to the
4 Settlement Classes when balanced against the probable outcome of extensive and costly litigation.
5 Substantial investigation and research have been conducted such that counsel for the Parties are reasonably
6 able to evaluate their respective positions. It appears to the Court that the Settlement will avoid substantial
7 additional costs by all parties, as well as the delay and risk that would be presented by further prosecution
8 of the Action. The Court finds that the Settlement that has been reached is the result of intensive, non-
9 collusive, arms-length negotiations.

10 12. The Court approves the Gross Settlement Amount, as set forth in the Settlement
11 Agreement, of Two Million, Four Hundred Thousand Dollars, and Zero Cents (\$2,400,000.00), which
12 shall be non-reversionary and which shall include (1) Individual Settlement Payments; (2) Settlement
13 Administration Costs; (3) the PAGA LWDA Payment to the LWDA; (4) the PAGA Employee Payment
14 to PAGA Employees; (5) the Enhancement Awards; (6) the Class Counsel Fee Award; and (7) the Class
15 Counsel Cost Award, payable under this Settlement in keeping with the subparagraphs below:

16 a. Individual Settlement Payments. The Court approves the methodology used to
17 calculate each Qualified Class Member's Individual Settlement Payment amount as detailed in the
18 Settlement Agreement and approves payments of those amounts to Qualified Class Members as Individual
19 Settlement Payments.

20 b. Settlement Administration Costs. The Court approves the payment of [AMOUNT
21 - TBD] as Settlement Administration Costs to the Settlement Administrator.

22 c. PAGA LWDA Payment to the LWDA. The Court approves the payment of One
23 Hundred Twelve Thousand, Five Hundred Dollars, and Zero Cent (\$112,500.00) to the California Labor
24 Workforce Development Agency for the settlement and release of the PAGA Claims.

25 d. PAGA Employee Payment to PAGA Employees. The Court approves the payment
26 of Thirty-Seven Thousand, Five Hundred Dollars, and Zero Cent (\$37,500.00) as the aggregate PAGA
27 Employee Payment to PAGA Employees, the methodology used to calculate each PAGA Employee's
28 Individual PAGA Employee Payment amount as detailed in the Settlement Agreement and approves

1 payments of those amounts to PAGA Employees as Individual PAGA Employee Payments.

2 e. Enhancement Awards. The Court approves the payment of Ten Thousand Dollars
3 and Zero Cents (\$10,000.00) for each of the Named Plaintiffs (i.e., \$20,000.00 for both Named Plaintiffs)
4 as Enhancement Awards to the Named Plaintiffs, separate and apart from any amounts due to Plaintiffs
5 as Individual Settlement Payments or Individual PAGA Employee Payments.

6 f. Class Counsel Fee Award. The Court approves the payment of Eight Hundred
7 Thousand Dollars and Zero Cents (\$800,000.00) [or _____ thousand dollars, and zero cents
8 (\$____.00), which is one-third (1/3) of the Gross Settlement Amount] as a Class Counsel Fee Award
9 payable to Class Counsel in recognition of Class Counsel's diligent representation of Plaintiffs and
10 Settlement Class Members and the contingent risks Class Counsel undertook in litigating the Action
11 because the Court determines that the award of such fees is fair and reasonable. The Court finds that Class
12 Counsel's request for attorneys' fees is reasonable under the common fund method. The Court finds that
13 Class Counsel's request for attorneys' fees is also reasonable under the lodestar method with application
14 of a multiplier. The Court finds that the number of hours Class Counsel spent prosecuting the Action is
15 reasonable and Class Counsel's hourly rates are reasonable and in line with rates prevailing in the
16 community. Application of a multiplier is appropriate given the contingent risk incurred by Class Counsel,
17 the difficulty of the questions involved, the substantial benefit conferred on the Class and State as a result
18 of the Settlement, and the skill displayed by Class Counsel.

19 g. Class Counsel Cost Award. The Court approves the payment of [_____ thousand
20 dollars, and zero cents (\$____.00)] as a Class Counsel Cost Award to Class Counsel for reimbursement
21 of Class Counsel's reasonable litigation expenses incurred in litigating and resolving the Action as a Class
22 Counsel Cost Award for reimbursement of Class Counsel's litigation costs because the Court determines
23 that the award of such costs is fair and reasonable.

24 13. The Court hereby approves the plan for transferring uncashed Individual Settlement
25 Payment and Individual PAGA Employee Payment checks to the State of California's State Controller
26 Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each
27 Settlement Class Member and PAGA Employee

28 14. The Court orders the Parties to carry out the settlement fund distribution process for the

1 Settlement according to the terms of the Settlement Agreement and authorizes the Parties to utilize all
2 reasonable procedures to effectuate those ends, which are materially consistent with this Order and the
3 Settlement Agreement.

4 15. The Parties shall bear their own respective attorneys' fees and costs, except as otherwise
5 provided for in this Order or in the Settlement Agreement and as later approved by the Court.

6 16. Pursuant to California Rule of Court, Rule 3.769(h), this Court shall retain jurisdiction over
7 all matters related to the administration and consummation of the Settlement and any claims, asserted in,
8 arising out of, or related to the subject matter of the Action including, but not limited to, all matters related
9 to the final distribution of Settlement funds and the determination of all controversies relating thereto.

10 17. A non-appearance Case Review re: Final Report re: Distribution of Settlement Funds is set
11 for _____ (240 days from this Order) at _____. The Court
12 orders Class Counsel to file the Final Report five (5) court days in advance of the Case Review.

13 18. Accordingly, and pursuant to Code of Civil Procedure section 382 and Rule 3.769 of the
14 California Rules of Court, this Court GRANTS Plaintiff's motion for Final Approval of Class Action
15 Settlement and further directs that a separate Final Judgment shall be entered in accordance with the terms
16 of this Order.

17 **IT IS SO ORDERED.**

18 DATED: _____

THE HONORABLE DAVID S. COHN
Judge of The Superior Court

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EXHIBIT 4

(Draft Final Judgment)

1 Kane Moon (Cal. SBN 249834)
kane.moon@moonyanglaw.com
2 Roy K. Suh (Cal. SBN 283988)
roy.suh@moonyanglaw.com
3 Lilit Ter-Astvatsatryan (Cal. SBN 320389)
lilit@moonyanglaw.com
4 **MOON & YANG, APC**
1055 West Seventh Street, Suite 1880
5 Los Angeles, California 90017
Telephone: (213) 232-3128
6 Facsimile: (213) 232-3125

7 Attorneys for Plaintiffs KIMBERLY CARO and
8 BRENDA LESLIE

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN BERNARDINO – CENTRAL JUSTICE CENTER**

11 KIMBERLY CARO, individually, and on behalf of
all others similarly situated, and BRENDA
12 LESLIE, individually, and on behalf of all others
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13 Plaintiffs,

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15 KINDRED HEALTHCARE OPERATING, LLC,
16 a Delaware corporation; THC – ORANGE
COUNTY, LLC, a limited liability company; KND
17 DEVELOPMENT 53, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

18 Defendants.
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Case No. CIVDS2022513

*Assigned for all purposes to the Honorable David
Cohn, Department S26*

[PROPOSED] FINAL JUDGMENT

Final Approval Hearing Date: [Date]
Time: [Time]
Department: S26

PAGA Case No.	
LWDA-CM-809234-20:	Oct. 9, 2020
Action Filed:	Oct. 13, 2020
FAC Filed:	Dec. 23, 2020
SAC Filed:	Mar. 20, 2022
TAC Filed:	Dec. 1, 2022
Trial Date:	None Set

[PROPOSED] FINAL JUDGMENT

In keeping with this Court's [FINAL APPROVAL HEARING DATE] Order Granting Final Approval of the Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims ("Final Approval Order") this Court hereby **ADJUDGES** and **DECREES**:

1. Pursuant to the Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court and Labor Code §§ 2698, *et seq.* ("PAGA"), this Court now enters this Final Judgment pursuant to which Plaintiffs, Qualified Class Members, and the State of California, California Labor and Workforce Development Agency ("LWDA"), shall take nothing from Defendant Kindred Healthcare Operating, LLC, Defendant THC-Orange County, LLC, and Defendant KND Development 53, LLC ("Defendants") except as expressly set forth in the Final Approval Order.

2. Pursuant to the Rules of Court, Rule 3.771(a), this Final Judgment, hence, binds the following Settlement Classes:

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC in California as an hourly, non-exempt employee at any time at any time from August 1, 2016 to [PRELIMINARY APPROVAL OR OTHER DATE] (the "*Caro* Class Period"), except for Defendant THC-Orange County, LLC's employees who released their claims as part of the finally adjudged settlement in *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino Superior Court, Case No. CIVDS1708958 and who only worked prior to January 11, 2021.

and

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant KND 53 Development, LLC in California as an hourly, non-exempt employee at any time at any time from February 23, 2017 to [PRELIMINARY APPROVAL OR OTHER DATE] (the "*Leslie* Class Period").

and finally binds the State of California as to the following PAGA Employees:

All current and former hourly non-exempt employees who worked for Defendant Kindred Healthcare Operating, LLC and Defendant THC – Orange County, LLC in California as an hourly, non-exempt employee at any time at any time from to October 13, 2019 to [PRELIMINARY APPROVAL OR OTHER DATE] (the "*Caro* PAGA Period"), except for Defendant THC-Orange County, LLC's employees who released their claims as part of the finally adjudged settlement in *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*, which was pending in San Bernardino Superior Court, Case No. CIVDS1708958 and who only

1 worked prior to January 11, 2021.

2 and

3 All current and former hourly non-exempt employees who worked for
4 Defendant Kindred Healthcare Operating, LLC and Defendant KND
5 Development 53, LLC in California as an hourly, non-exempt employee
6 at any time at any time from to February 23, 2020 to [PRELIMINARY
7 APPROVAL OR OTHER DATE] (the "*Leslie* PAGA Period").

8 3. Pursuant to Code of Civil Procedure section 664.6 and Rules of Court, Rule 3.769(h), this
9 Court shall retain jurisdiction over the Parties, Qualified Class Members and the LWDA with respect to
10 enforcement of this Final Judgment including, but not limited to, all matters related to the interpretation,
11 administration and consummation of the Settlement. Pursuant to the Rules of Court, Rule 3.771(b), the
12 Settlement Administrator's posting of an electronic copy of this Final Judgment on the Settlement
13 Administrator's website shall be deemed due and sufficient notice of entry of this Final Judgment.

14 **IT IS SO ADJUDGED.**

15 DATED: _____

16 _____
17 THE HONORABLE DAVID S. COHN
18 Judge of The Superior Court
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