

CONFIDENTIAL SETTLEMENT AGREEMENT

This Confidential Settlement Agreement is entered into on the date executed by the parties in furtherance of the Memorandum of Understanding made as of the 24th day of September 2021. The parties to this Agreement are MELANIE L. BALAJADIA, BRIAN M. BADIOLA, MAY CLAIRE V. CABACUNGAN and VICTOR TURINGAN (referred to herein as “Plaintiffs”), on the one hand, and Defendant HELPING HANDS RESIDENTIAL CARE HOME, INC.; JTCN, INC. dba HELPING HANDS FOR CHILDREN (referred to herein as “Defendants”) on the other hand. Plaintiffs and Defendants are collectively referred to herein as “the Parties” regarding the agreed upon resolution between the parties.

RECITALS

WHEREAS, Plaintiffs filed a lawsuit against Defendants, HELPING HANDS RESIDENTIAL CARE HOME, INC. and JTCN, INC. dba HELPING HANDS FOR CHILDREN, and individuals ROWENA CALING NGUYEN, and THANH NGUYEN, in the United States District Court for the Northern District of California, Case number 5:21-CV-00616-NC (referred to herein as “the Action”).

WHEREAS, Defendants and Releasees dispute and deny Plaintiffs’ claims.

WHEREAS, The Parties now desire to settle fully and finally all of the claims that were or could have been asserted in the Action and all other differences between them.

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Settlement Payment.

In exchange for the promises and obligations herein contained, Defendants shall pay to Plaintiffs the total Settlement Payment of \$115,000.00 (One Hundred Fifteen Thousand Dollars), of which \$10,000 (Ten Thousand Dollars) is designated for the resolution of the PAGA claims alleged in the Action. Plaintiffs will provide specific allocations between W2 and 1099 to each Plaintiff and 1099 to Plaintiffs’ counsel.

(a) Each party shall bear its/their own attorneys’ fees and costs except as allocated in the Settlement Payment.

(b) The Settlement Payment minus \$10,000 for the PAGA allocation shall be paid as follows:

(a) To MELANIE L. BALAJADIA:

- i. \$2,400.48 payable minus applicable withholdings, and subject to a W2, for alleged unpaid wages;

- ii. \$16,000.00 payable without deductions, and subject to a 1099, for alleged penalties and interest, and to secure the releases and other obligations in this agreement;

(b) To BRIAN M. BADIOLA:

- i. \$2,400.48 payable minus applicable withholdings, and subject to a W2, for alleged unpaid wages;
- ii. \$16,000.00 payable without deductions, and subject to a 1099, for alleged penalties and interest, and to secure the releases and other obligations in this agreement;

(c) To MAY CLAIRE V. CABACUNGAN:

- i. \$1,114.68 payable minus applicable withholdings, and subject to a W2, for alleged unpaid wages;
- ii. \$14,000.00 payable without deductions, and subject to a 1099, for alleged penalties and interest, and to secure the releases and other obligations in this agreement;

(d) To VICTOR TURINGAN:

- i. \$800.36 payable minus applicable withholdings, and subject to a W2, for alleged unpaid wages;
- ii. \$13,000.00 payable without deductions, and subject to a 1099, for alleged penalties and interest, and to secure the releases and other obligations in this agreement;

(e) To the RUSNAK LAW OFFICE:

- i. \$39,284.00 payable without deductions, and subject to a 1099, for alleged attorneys' fees and costs.

(c) All payments are conditioned on Plaintiffs completed and signed W-4 and W-9 forms, and Plaintiffs' counsel provided a completed and signed W-9 form.

(d) \$10,000 of the Settlement Payment, or such other amount as the court may order, will be paid as PAGA allocation as follows:

(a) \$7,500 to the Labor Workforce Development Agency;

(b) \$500.00, without deductions, and subject to a 1099, to MELANIE L. BALAJADIA;

(c) \$500.00, without deductions, and subject to a 1099, to BRIAN M. BADIOLA

(d) \$500.00, without deductions, and subject to a 1099, to MAY CLAIRE V. CABACUNGAN;

(e) \$500.00, without deductions, and subject to a 1099, To VICTOR TURINGAN;

(f) \$500.00, without deduction, and subject to a 1099, to the other employee who worked for both defendants during the PAGA period and who allegedly did not timely receive overtime.

The following terms will be included in the final agreement:

2. Approval of PAGA settlement/allocation and FLSA waiver.

- a. On or before October 13, 2021, counsel for Plaintiffs will file a motion with the court seeking approval of the PAGA settlement/allocation and approval of Plaintiffs' waiver of claims under the Fair Labor Standards Act. Counsel for Defendants will provide reasonable assistance, including providing a declaration if needed.
- b. Counsel will endeavor to maintain the confidentiality of this Agreement and the MOU, but may divulge such terms and conditions to the court as the court may determine is necessary to evaluate and approve the settlement/allocation.
- c. Approval of the court on this motion is an integral part of this Agreement. If the court rejects the PAGA allocation on the grounds that the amount allocated is insufficient, the parties will work together to determine a new allocation of the total Settlement Sum, but the total Settlement Sum will not increase.
- d. This agreement shall only become enforceable and binding if the Court grants approval of the FLSA waiver; if Court approval of the FLSA waiver is denied, then this entire settlement is null and void, and parties agree it is inadmissible in any court, administrative agency, or tribunal for any purpose whatsoever, and the parties will engage Jeffrey Wohl to continue the mediation.
- e. If the court refuses to approve the PAGA allocation, or such other PAGA allocation to which the parties may agree, Defendants will pay the Settlement Sum minus the PAGA allocation and Plaintiffs will ask the court to dismiss Plaintiffs' non-PAGA claims

3. Dismissal of Action.

When the final Settlement Payment has been received by Plaintiffs' counsel, Plaintiffs will cause to be filed and served a full dismissal with Prejudice of the Complaint of the Action of all parties and all causes of action.

4. No Admission of Liability.

This Agreement is entered into in compromise of disputed claims. Plaintiffs acknowledge that the execution of this Agreement and the payment of the amounts hereunder are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of the Defendants or Releasees, or any other person or business entity. Plaintiffs further acknowledges that Defendants and Releasees deny all allegations of wrongdoing alleged in the Action. The Parties intend, by this Agreement, merely to avoid the expense, delay, uncertainty, and burden of litigation.

5. Release of All Claims.

In exchange and except for the consideration identified above, Plaintiffs, on behalf of themselves, their heirs, executors and assigns agree to and hereby do absolutely, forever and fully, generally and specifically, release and discharge Defendants HELPING HANDS RESIDENTIAL CARE HOME, INC. and JTCN, INC. dba HELPING HANDS FOR CHILDREN, and individuals ROWENA CALING NGUYEN, and THANH NGUYEN, and each of their agents, associates, independent contractors, employees, employers, directors, officers, shareholders, partners, joint ventures, subsidiaries, successors or predecessor entities, estates, representatives, executors, administrators, attorneys, insurers, heirs, executors and assigns ("Releasees") from any and all claims, contentions, rights, debts, liabilities, demands, accounts, obligations, duties, promises, costs, expenses (including, but not limited to, attorneys' fees), liens, subrogation rights, indemnification rights, damages, losses, actions, and causes of action, of any kind whatsoever, whether due or owing in the past, present or future and whether based upon federal, state, or local contract law, tort law, statute, or any other legal or equitable theory of recovery, and whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured, with respect to, pertaining to, or arising from any matters, acts, omissions, events, conduct or occurrences at any time prior to the date of this Agreement including, without limiting the generality of the foregoing provisions, any and all causes of action, claims, or remedies referred to or based upon the facts alleged in the Complaint filed in the subject Action.

Plaintiffs further promise and agree that Plaintiffs will not participate, assist, or cooperate in any claims by third parties against Defendants or Releasees, whether before a court, arbitrator, or administrative or government agency, unless required to do so by a lawful subpoena, court order, or other law, and understands and agrees that a breach of this promise will constitute a material breach of this Agreement. Plaintiffs further promise and agree that Plaintiffs shall not accept damages of any nature, or other equitable or legal remedies for Plaintiffs' own benefit, or attorneys' fees or costs from Defendants or Releasees with respect to any claim released by this Agreement, other than those which are set forth in this Agreement.

This Release includes, but is not limited to, all claims involving: wrongful or constructive termination, age discrimination, failure to indemnify, breach of contract, retaliation, assault, battery, infliction of emotional distress, cash shortages, missed meal periods, missed rest breaks, or wage and hour ordinances; all tort, statutory, contract and constitutional claims of any nature; all claims for pain and suffering; any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations Act, the Fair Labor Standards Act (Cal. Labor Code Section 2698 *et seq.*), the Family and Medical Leave Act, the California Fair Employment and Housing Act, the California Constitution, the California Family Rights Act, the California Labor Code, the California Government Code, the California Business & Professions Code, the Older Worker's Benefit Act; any claims for job injuries; or any other federal, state, or local statute or regulation; or any claim for severance pay, bonus, sick leave, holiday pay, vacation pay, stock, stock options, phantom stock, life insurance, health and medical insurance or any other fringe benefit; costs and attorneys' fees; and any other claims, whether in law or equity, which Plaintiff asserts or could assert, at common law or under statute, rule, regulation, or order of law, whether federal, state, or local.

6. Waiver of Civil Code Section 1542.

Plaintiffs hereby waive any and all rights or benefits under Section 1542 of the Civil Code of the State of California, which provides that:

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

Plaintiffs hereby represent and warrant that they understand the effect of this waiver, and Code section, and that they sought legal counsel for advice concerning this Agreement.

7. Release of Unknown Claims.

Plaintiffs acknowledge that they may hereafter discover Claims and/or facts now unknown or unsuspected that existed as of the date this Agreement is executed, which are in addition to, or different from, those which the Parties now know or believe to be true with respect to the subject matter of this Agreement. Nevertheless, Plaintiffs intend by this Agreement to release fully, finally, and forever all claims released hereby, including those stated in the Action. Accordingly, this Agreement shall remain in full force as a complete release of such claims notwithstanding the discovery or existence of any such additional or different claims and/or facts before or after the date of this Agreement.

8. Representation and Warranty by Releasing Parties.

Plaintiffs and Defendants represent and warrant to their respective Releasees that they: (i) are the lawful owners of all claims released here, (ii) have all necessary power and authority to make such release, including any necessary consent or approval from any person and including the absence of any duty or obligation that would prevent, or be put in breach or default by, such release, and (iii) have not heretofore transferred or attempted to transfer all or any part of any such thing released in any manner whatsoever, including by way of subrogation or operation of law. The Parties, and each of them, shall indemnify and hold harmless their Releasees, and each of them, with respect to any liability, cost, expense, or claim with respect to, pertaining to, or arising from any assertion of any such obligation or transfer or lack of such power or authority including, but not limited to, reasonable attorneys' fees and costs. The Parties, and each of them, represent and warrant further to their Releasees and each of them, that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of their Releasees or any other person or entity whatsoever. The Parties, and each of them, represent that they have consulted with and been advised by their counsel of record in the Action with regard to this Agreement.

9. Confidentiality except the extent necessary to obtain court approval of the PAGA settlement.

Plaintiffs agree to not disclose the fact of or the amount of this settlement, the terms and contents of this Agreement, and the negotiations leading thereto. Plaintiffs will take all reasonable efforts to instruct and direct any of his family members or others who are or may become aware of this Agreement not to publicize or disclose (directly or indirectly) such information to any person. Notwithstanding this Paragraph, the Parties or their counsel may disclose the terms of this Agreement as follows:

- (a) As required by the court in order to obtain the court's approval of the PAGA settlement/allocation and/or the FLSA waiver;
- (b) in response to an order, disclosure requirement, or subpoena of a court of competent jurisdiction or as necessary to effectuate the terms of this agreement;
- (c) in response to any inquiry or order issued by a governmental agency;
- (d) in response to a request from the California State Bar;
- (e) to the extent necessary to report income to appropriate taxing authorities, and in other related dealings with taxing authorities;
- (f) to their legal, tax and financial advisors,
- (g) to any persons with whom they file joint tax returns (if any), and
- (h) in any action or proceeding brought to enforce this agreement.

In the event of an unsolicited inquiry, the Parties or their attorneys may choose not to respond or may respond only by stating, "The matter has been resolved." No other response (whether by words, gesture, expression, or otherwise) may be made to any such inquiries, including any follow-up inquiries.

In the event of a breach, the prevailing party shall be entitled to recover his/her reasonable attorney fees and costs in an action to enforce this provision.

10. Mutual Non-Disparagement.

Plaintiffs agree not to make any disparaging remarks about Defendants or Releasees, whether written or oral (including electronic communication in any form). Individuals ROWENA CALING NGUYEN, and THANH NGUYEN agree not to make any disparaging remarks about Plaintiffs, whether written or oral (including electronic communication in any form). This paragraph does not prevent either party from providing truthful testimony if subpoenaed to testify.

11. No Obligation to Re-Employ

Plaintiffs acknowledge and agree that Plaintiffs are no longer employed by Defendants and are not entitled to any benefits available to employees employed after the date they stopped working for Defendants. Plaintiffs acknowledge Defendants are not obligated to re-employ Plaintiffs, and that any request for re-employment may be denied for no reason.

12. Neutral Reference.

In response to a written or verbal employment verification and/or reference inquiry on behalf of Plaintiffs from a prospective employer directed to ROWENA CALING NGUYEN or THANH NGUYEN, Defendants will only confirm Plaintiffs' employment with Defendants and provide Plaintiffs' job title and dates of employment.

13. Binding Effect.

This Agreement and all documents referred to herein shall bind and inure to the benefit of each of the Parties hereto and the Releasees.

14. Additional Representations and Warranties of the Parties.

The Parties, and each of them, further represent and warrant to each other that:

- a. **Understanding of Agreement.** The Parties understand and agree to this Agreement and the terms and conditions contained herein and, in the documents, referred to herein, and have relied upon their own judgment, belief, knowledge, understanding and expertise concerning the legal effect of this Agreement.
- b. **Voluntary Resolution.** The Parties enter into this Agreement and the documents referred to herein, knowingly and voluntarily, in the total absence of any fraud, mistake, duress, coercion, or undue influence and after careful thought and reflection upon this Agreement and the documents referred to herein; and accordingly, by signing this document and the documents referred to herein, they signify full understanding, agreement and acceptance.
- c. **Investigation of Facts.** The Parties have investigated the facts pertaining to this Agreement and all matters pertaining thereto as deemed necessary.
- d. **Parties' Representations & Warranties.** Aside from the Action, the Parties have not commenced or prosecuted, and will not commence or prosecute, any other action or proceeding for recovery of damages or for any form of equitable relief, declaratory relief or any other form of action or proceeding or arbitration against any Party or other person based upon the Claims released in this Agreement including, but not limited to, the Claims that are the subject of the Action. This Agreement shall constitute a judicial bar to the institution of any such action or proceeding or any assignment thereof.

15. Ambiguities or Uncertainties.

This Agreement and the documents referred to herein, and any ambiguities or uncertainties herein or therein, shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this document or the documents referred to herein, on the express understanding and agreement that the Parties participated equally in the negotiation and preparation of the Agreement and the documents referred to herein, or have had equal opportunity to do so and to consult with counsel of their choice. Accordingly, the Plaintiff waives the benefit of California Civil Code § 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

16. Attorneys' Fees to Prevailing Party in the Event of Breach of the Settlement Agreement.

In the event of a breach of any provision of this Agreement, any Party may institute an action specifically to enforce any term or terms of this Agreement, and the unsuccessful party to the Litigation shall pay to the prevailing party, in addition to any other relief that may be granted, all reasonable costs and expenses of the Litigation, including without limitation, the prevailing party's reasonable attorneys' fees and expenses, as awarded by any court of law.

17. California Law; Construction.

This Agreement and the documents referred to herein, shall be governed by and construed and interpreted in accordance with the laws of the State of California. In the language of this document and the documents referred to herein, the singular and plural numbers, and the masculine, feminine and neuter genders, shall each be deemed to include all others, and the word "person" shall be deemed to include corporations and every other entity, as the context may require.

18. Severability.

In the event that any provision of this Agreement should be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

19. Multiple Counterparts; Execution by Facsimile, Electronic Signature Or PDF.

This Agreement and any document referred to herein, may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument. Any Party may execute and/or deliver this Agreement by facsimile, electronic signature or PDF.

20. Waiver, Modification and Amendment.

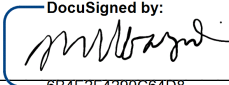
No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

21. Enforceability.

The Parties specifically agree that (i) this Agreement is admissible as evidence and subject to disclosure in enforcement proceedings; (ii) this Agreement is binding and enforceable; (iii) all the material terms of the settlement agreement are set forth herein; and (iv) all Parties specifically waive any confidentiality privilege that may apply to this Agreement solely for purposes of its enforcement in a Court of law.

Having read, understood, and agreed to the foregoing Agreement, the Parties hereby voluntarily execute this Agreement by placing their signatures below.

Dated: 10/18/2021, 2021

By: 
MELANIE L. BALAJADIA
DocuSigned by: 6B4E2F4290C64D8

Dated: _____, 2021

By: _____
BRIAN M. BADIOLA

Dated: _____, 2021

By: _____
MAY CLAIRE V. CABACUNGAN

17. California Law; Construction.

This Agreement and the documents referred to herein, shall be governed by and construed and interpreted in accordance with the laws of the State of California. In the language of this document and the documents referred to herein, the singular and plural numbers, and the masculine, feminine and neuter genders, shall each be deemed to include all others, and the word "person" shall be deemed to include corporations and every other entity, as the context may require.

18. Severability.

In the event that any provision of this Agreement should be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

19. Multiple Counterparts; Execution by Facsimile, Electronic Signature Or PDF.

This Agreement and any document referred to herein, may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument. Any Party may execute and/or deliver this Agreement by facsimile, electronic signature or PDF.

20. Waiver, Modification and Amendment.

No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

21. Enforceability.

The Parties specifically agree that (i) this Agreement is admissible as evidence and subject to disclosure in enforcement proceedings; (ii) this Agreement is binding and enforceable; (iii) all the material terms of the settlement agreement are set forth herein; and (iv) all Parties specifically waive any confidentiality privilege that may apply to this Agreement solely for purposes of its enforcement in a Court of law.

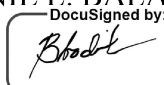
Having read, understood, and agreed to the foregoing Agreement, the Parties hereby voluntarily execute this Agreement by placing their signatures below.

Dated: _____, 2021

Dated: 10/18/2021, 2021

Dated: _____, 2021

By: _____
MELANIE L. BALAJADIA

DocuSigned by:

By: _____
BRIAN M. BADIOLA

By: _____
MAY CLAIRE V. CABACUNGAN

17. California Law; Construction.

This Agreement and the documents referred to herein, shall be governed by and construed and interpreted in accordance with the laws of the State of California. In the language of this document and the documents referred to herein, the singular and plural numbers, and the masculine, feminine and neuter genders, shall each be deemed to include all others, and the word "person" shall be deemed to include corporations and every other entity, as the context may require.

18. Severability.

In the event that any provision of this Agreement should be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

19. Multiple Counterparts; Execution by Facsimile, Electronic Signature Or PDF.

This Agreement and any document referred to herein, may be executed in any number of counterparts, each of which may be deemed an original and all of which together shall constitute a single instrument. Any Party may execute and/or deliver this Agreement by facsimile, electronic signature or PDF.

20. Waiver, Modification and Amendment.

No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement. This Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

21. Enforceability.

The Parties specifically agree that (i) this Agreement is admissible as evidence and subject to disclosure in enforcement proceedings; (ii) this Agreement is binding and enforceable; (iii) all the material terms of the settlement agreement are set forth herein; and (iv) all Parties specifically waive any confidentiality privilege that may apply to this Agreement solely for purposes of its enforcement in a Court of law.

Having read, understood, and agreed to the foregoing Agreement, the Parties hereby voluntarily execute this Agreement by placing their signatures below.

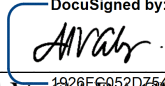
Dated: _____, 2021

By: _____
MELANIE L. BALAJADIA

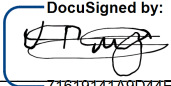
Dated: _____, 2021

By: _____
BRIAN M. BADIOLA

Dated: 10/18/2021, 2021

By: 
MAY CLAIRE V. CABACUNGAN

Dated: 10/18/2021
_____, 2021

DocuSigned by:

71619141A9D44E0...
By: _____
VICTOR TURINGA

Date: _____, 2021

By: _____
ROWENA CALING NGUYEN on behalf of
herself and HELPING HANDS
RESIDENTIAL CARE HOME, INC.;
JTCN, INC. dba HELPING HANDS FOR
CHILDREN

Date: _____, 2021

By: _____
THANH NGUYEN

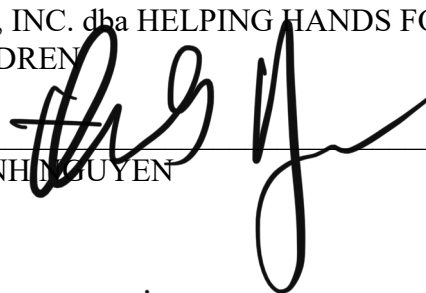
Dated: _____, 2021

By: _____
VICTOR TURINGA

Date: Oct. 7, 2021

By: 
ROWENA OCELING NGUYEN on behalf of
herself and HELPING HANDS
RESIDENTIAL CARE HOME, INC.;
JTCN, INC. dba HELPING HANDS FOR
CHILDREN

Date: Oct. 7, 2021

By: 
THANH NGUYEN