

1 **INTRODUCTION**

2 This Class and Representative Action Settlement Agreement (“Settlement Agreement”) is
3 made and entered into by and between Plaintiff JONATHAN ADAMS (“Class Representative,”
4 “Plaintiff,” or “ADAMS”), individually and on behalf of all putative class members and aggrieved
5 employees, on the one hand, and Defendant HACIENDA POST ACUTE, INC. (“Defendant” or
6 “HACIENDA”), on the other hand. ADAMS and HACIENDA are collectively referred to herein
7 as the “Parties.” This Settlement Agreement is subject to the terms and conditions set forth below
8 and the Court’s approval. This Settlement Agreement completely resolves the wage and hour class
9 and representative action filed by ADAMS against Defendant HACIENDA on May 12, 2021, Kings
10 County Superior Court, Case No. 21C-0143.

11 **I. DEFINITIONS**

12 The following definitions are applicable to this Settlement Agreement. Definitions
13 contained elsewhere in this Settlement Agreement shall also be applicable.

14 1. “Action” means the case entitled Jonathan W. Adams v. Hacienda Post Acute, Inc.,
15 Case No. 21C-0143, pending before the Court.

16 2. “Class” means all non-exempt hourly employees who were employed by
17 HACIENDA in California during the Class Period. Members of the Class are referred to herein
18 individually as a “Class Member” and collectively as “Class Members.” HACIENDA represents
19 that the Class includes approximately 503 Class Members as of September 8, 2022.

20 3. “Class List” means a list of Class Members that HACIENDA will compile from its
21 records.

22 4. “Class Period” means the time period from November 15, 2016 through April 30,
23 2022.

24 5. “Court” means the Kings County Superior Court.

25 6. “Defendant’s Counsel” means Atkinson, Andelson, Loya, Ruud & Romo.

26 7. “Effective Date” means the latter of: (a) if no objections to the Settlement Agreement
27 are made in writing or at the hearing for Final Approval, the date the Court enters Judgment and
28 service of entry of judgment is received by Defendant; (b) if objections are made in writing or at the

1 hearing for Final Approval and overruled, and no appeal is taken of the order granting Final
2 Approval, then the Effective Date shall be three (3) calendar days after the deadline to file an appeal
3 of the order granting Final Approval; or (c) if one or more appeals are taken from the Court's
4 overruling of any objections to the settlement, then the Effective Date shall be three (3) calendar
5 days after any appeal is dismissed or the order granting Final Approval of the settlement is affirmed
6 after an appeal, and the order granting Final Approval is not subject to further review and becomes
7 final.

8 8. "Final Approval" means the Court Order granting final approval of the Settlement
9 Agreement and entering final judgment thereon.

10 9. "Individual Settlement Payment" means each Participating Class Member's and/or
11 PAGA Group member's pro rata share of the Net Settlement Proceeds calculated in accordance with
12 the Individual Settlement Payment calculations described below.

13 10. "Maximum Settlement Amount" means the total amount (excluding employer
14 payroll taxes for wage payments under the Settlement Agreement) HACIENDA is required to pay
15 under this Settlement Agreement, subject to ADAMS obtaining Final Approval and the Effective
16 Date occurring. The Maximum Settlement Amount includes only (and all subject to Court
17 approval): (1) the attorneys' fees of Class Counsel; (2) the litigation costs and expenses of Class
18 Counsel; (3) the Service Award to the Class Representative; (4) the payment to the Labor Workforce
19 and Development Agency ("LWDA") pursuant to PAGA; (5) all costs of administration, including,
20 without limitation, the Settlement Administrator's fees and expenses; and (6) the Individual
21 Settlement Payments paid to Participating Class Members and PAGA Group Members.

22 11. "Net Settlement Amount" means the portion of the Maximum Settlement Amount,
23 less the amounts approved and awarded by the Court for: (1) the attorneys' fees of Class Counsel;
24 (2) the litigation costs and expenses of Class Counsel; (3) the Service Award to the Class
25 Representative; (4) the payment to the LWDA pursuant to PAGA; (5) all costs of administration,
26 including, without limitation, the Settlement Administrator's fees and expenses.

27 12. "Notice Deadline" means the date by which Class Members must submit to the
28 Settlement Administrator a valid request to be excluded from the settlement, object to the settlement,

1 or dispute the number of workweeks worked during the Class Period. If the date of the Notice
2 Deadline falls on a Sunday or federal holiday, the time to object, opt-out, or submit the dispute will
3 be extended to the next calendar day on which the U.S. Postal Service is open.

4 13. "Notice of Settlement" means the notice that the Court approves and orders to be
5 sent to all Class Members advising them of their rights under this Settlement Agreement. The Notice
6 of Settlement is attached hereto as Exhibit 1.

7 14. "PAGA" means the California Labor Code Private Attorneys General Act of 2004
8 (Cal. Lab. Code §§ 2698, *et seq.*).

9 15. "PAGA Group" means all non-exempt, hourly-paid California employees employed
10 by HACIENDA during the PAGA Period. Members of the PAGA Group are referred to herein
11 individually as a "PAGA Group Member" and collectively as "PAGA Group Members."

12 16. "PAGA Payment" means the amount that the Parties have agreed to allocate from
13 the Maximum Settlement Amount in order to settle claims arising under PAGA.

14 17. "PAGA Period" shall mean the period from May 12, 2020 through April 30, 2022.

15 18. "Participating Class Members" or "Settlement Class" means all Class Members who
16 do not submit a valid request to be excluded from the settlement, consistent with the terms set forth
17 in this Settlement Agreement.

18 19. "Plaintiff's Counsel" or "Class Counsel" means HAINES LAW GROUP, APC,
19 counsel of record for ADAMS.

20 20. "Preliminary Approval" means the Court Order granting preliminary approval of the
21 Settlement Agreement.

22 21. "Qualified Settlement Account" means the account established by the Settlement
23 Administrator into which the Maximum Settlement Amount and all employer payroll taxes
24 associated therewith shall be deposited by HACIENDA.

25 22. "Released Parties" means HACIENDA, its past, present, and/or future owners,
26 officers, directors, managing agents, trustees, payroll processors, independent contractors, members,
27 managers, shareholders, employees, attorneys, insurers, assigns, shareholders, successors,
28 predecessors and agents, HACIENDA's past, present, and/or future parent, subsidiary, or affiliated

1 entities, DBAs and franchisors, and each of their owners, officers, directors, managing agents,
2 trustees, payroll processors, independent contractors, members, managers, employees, attorneys,
3 insurers, assigns, shareholders, successors, predecessors and agents.

4 23. “Released Claims” means any and all claims, damages, or causes of action alleged
5 in, or arising out of, the allegations in the Complaint and First Amended Complaint filed in the
6 Action and the PAGA Notice, which were alleged or that could have been alleged by ADAMS
7 and/or any Participating Class Member in such complaints and/or the PAGA Notice based on any
8 of the factual allegations contained in such complaints and/or the PAGA Notice, including, but not
9 limited to, claims under state, federal (i.e., Fair Labor Standards Act (FLSA)) or local law, including,
10 but not limited to claims for unpaid wages, claims for the failure to pay minimum wages, claims for
11 the failure to pay overtime wages, claims related to missed meal and rest breaks or periods and
12 nonpayment of premium pay for such, failure to pay reporting time pay, failure to comply with
13 itemized employee wage statement provisions, failure to pay wages due at separation, failure to
14 timely pay wages during employment, failure to keep requisite payroll records, the failure to
15 reimburse for business expenses, unfair competition, the payment of any penalties (including
16 PAGA). The Released Claims specifically include, but are not limited to, all claims arising under
17 California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 516, 558, 1174,
18 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2802 and 2804, the Wage
19 Orders of the California Industrial Welfare Commission, California Business and Profession Code
20 sections 17200, *et seq.*, California Code of Civil Procedure section 1021.5, and California common
21 law of contract, interest and claims for attorney’s fees relating in any way to those claims alleged
22 and mentioned in the complaint(s) and/or PAGA Notice.

23 24. “Released PAGA Claims” means any and all claims for civil penalties under PAGA
24 that were pled or which reasonably could have been pleaded based on the factual allegations pled in
25 the operative Complaint in the Action and in the PAGA Notice sent by Plaintiff to the LWDA,
26 including California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 516, 1174, 1194,
27 1197, 1197.1, 1198, 2802, 2804, 2698, *et seq.*, and the applicable IWC Wage Orders.

28 25. “Service Award” means an award approved by the Court to the Class Representative

1 in exchange for a general release, and in recognition of his efforts and work in prosecuting the
2 Action on behalf of all Class Members.

3 26. "Settlement Administrator" means a third-party class action settlement administrator
4 mutually agreed to by the Parties and approved by the Court for the purposes of administering this
5 settlement.

6 27. "Settlement Administration Costs" mean all the expenses payable from the
7 Maximum Settlement Amount to the Settlement Administrator for administering this Settlement
8 Agreement, including, but not limited to, calculating weeks of employment from the Class List,
9 printing, translating into Spanish, distributing and tracking forms for this settlement, mailing
10 notices, calculating awards, processing requests for exclusion and objections, performing necessary
11 skip traces on Notices of Settlement returned as undeliverable, mailing Participating Class Members
12 and PAGA Group Members settlement checks, issuing any required tax reporting forms, distributing
13 the Maximum Settlement Amount and Net Settlement Amounts and providing necessary reports
14 and declarations, as requested by the Parties, Class Counsel and Defendant's Counsel, among other
15 things in this Settlement Agreement.

16 28. "Workweeks" mean the total number of weeks Class Members worked at least one
17 shift for HACIENDA in a non-exempt, hourly-paid position in California at any of its locations
18 during the Class Period. Workweeks shall be calculated by counting the number of days between
19 each Class Member's first date employed by HACIENDA in a non-exempt, hourly-paid position
20 during the Class Period and the last day they were employed by HACIENDA in a non-exempt,
21 hourly-paid position during the Class Period, and dividing that sum by seven and rounding up to the
22 nearest whole number.

23 II. PROCEDURAL AND FACTUAL BACKGROUND

24 29. On May 12, 2021, ADAMS filed a class action Complaint in Kings County Superior
25 Court, alleging nine (9) separate causes of action for various wage and hour violations. In his
26 Complaint, ADAMS' claims include: (1) failure to pay overtime wages; (2) failure to pay minimum
27 wages; (3) failure to pay reporting time pay; (4) failure to provide rest breaks; (5) failure to provide
28 meal breaks; (6) failure to reimburse for all necessary business expenses; (7) failure to provide

1 accurate itemized wage statements; (8) failure to pay all wages at the end of employment; and (9)
2 violation of California Business & Professions Code.

3 30. Additionally on May 12, 2021, ADAMS submitted a PAGA notice (“PAGA Notice”)
4 to the Labor and Workforce Development Agency (“LWDA”). On July 19, 2021, Plaintiff filed a
5 First Amended Complaint to include a tenth cause of action for civil penalties under the California
6 Private Attorneys General Act (“PAGA”).

7 31. After the filing of the Action, ADAMS and HACIENDA engaged in significant
8 informal discovery including the production of policy records, time records, and payroll records for
9 HACIENDA’s employees, as well as other data regarding HACIENDA’s employees. The parties
10 exchanged substantial informal discovery and engaged in conferences regarding ADAMS’ claims
11 and the claims of the alleged aggrieved employees, the value of those claims, and HACIENDA’s
12 defenses to those claims.

13 32. The Parties have engaged in sufficient investigation and discovery to assess the
14 relative merits of ADAMS’ claims and of HACIENDA’S defenses to them. On September 8, 2022,
15 the Parties attended a full-day mediation with experienced employment law mediator Todd Smith,
16 Esq., in an effort to resolve this class and representative action. The Parties did not reach a settlement
17 at mediation, but they continued their settlement negotiations with Mr. Smith and reached a
18 settlement via a mediator’s proposal.

19 33. HACIENDA denies any liability or wrongdoing of any kind associated with the
20 claims alleged in the PAGA Notice and Complaint and First Amended Complaints, and further
21 denies that the Action is appropriate for class treatment for any purpose other than this settlement.
22 HACIENDA contends that it has complied with the California Labor Code at all times. It is
23 HACIENDA’s position that, if this case were to be litigated, class certification would be denied,
24 and the PAGA claims would be found to be without procedural and substantive merit.

25 34. The Parties expressly acknowledge that this Settlement Agreement is entered into
26 solely for the purpose of compromising significantly disputed claims. The Action, the negotiation
27 and execution of this Settlement Agreement, and all acts performed or documents executed pursuant
28 to or in furtherance of the Settlement Agreement (i) shall not be used as an admission or evidence

of wrongdoing on behalf of HACIENDA; (ii) shall not be an admission or evidence of fault on behalf of HACIENDA in any action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification in the Action or with respect to any other proceeding.

35. Class Counsel represent they have conducted a thorough investigation into the facts and law during the prosecution of the Action, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by HACIENDA. Counsel for the Parties also represent they have investigated the applicable law as applied to the facts discovered regarding the alleged claims of ADAMS, the putative Class, allegedly aggrieved employees, and the potential defenses thereto.

36. Based on their own independent investigation and evaluation, Class Counsel are of the opinion (and will so represent to the Court) that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk any class claims would not be certified by the Court, and the risk of successful defenses asserted by HACIENDA. HACIENDA and its counsel also agree (and will so represent to the Court) that this settlement is fair and in the best interest of the Settlement Class.

37. The Parties agree that the Class described herein may be certified for settlement purposes only and that any motion for preliminary approval seeking, *inter alia*, certification of the Class is for purposes of the settlement only. If for any reason the settlement is not approved, the certification will have no force or effect and will immediately be revoked. The Parties further agree that certification for purposes of the settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding. The Parties further agree that by entering this settlement, HACIENDA is not waiving any other defenses to the claims.

III. TERMS OF AGREEMENT

38. Terms of this Settlement Agreement are Subject to Court Approval. All terms set

forth in this Settlement Agreement are subject to Court approval. The Parties stipulate to class certification for purposes of settlement only. ADAMS shall apply to the Court for approval of the Settlement Agreement and for class certification solely for purposes of effectuating this settlement. HACIENDA shall not oppose such application, provided it does not deviate from this Settlement Agreement. If, for any reason, the settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of settlement is not an admission that class certification is proper under the standard applied to contested certification motions and that this settlement will not be admissible in this, or in any other, legal process or proceeding as evidence that (i) a class should be certified or (ii) HACIENDA is liable to ADAMS or any other Class Members.

39. Overview of Payment Structure. This settlement is made on a non-reversionary basis. This settlement shall consist of a Maximum Settlement Amount which, in turn, includes only (and all subject to Court approval): (1) the attorneys' fees of Class Counsel; (2) the litigation costs and expenses of Class Counsel; (3) the Service Award to the Class Representative; (4) the payment to the LWDA pursuant to PAGA; (5) all costs of administration, including, without limitation, the Settlement Administrator's fees and expenses; and (6) the Individual Settlement Payments paid to Participating Class Members and PAGA Group Members.

40. Payments Made by HACIENDA. The following are all amounts HACIENDA will pay pursuant to this Settlement Agreement:

a. *Maximum Settlement Amount.* HACIENDA shall pay Five Hundred Thousand Dollars and Zero Cents (\$500,000) to fund settlement of the Action. The payments by HACIENDA pursuant to this Settlement Agreement shall settle all claims released herein. The settlement payment is not being made for any other purpose and will not be construed as compensation for determining eligibility for any health and welfare benefits or unemployment compensation. The Maximum Settlement Amount shall also include any interest that accrues in the Qualified Settlement Account created by the Settlement Administrator.

b. *Employer Payroll Taxes.* HACIENDA shall be responsible for paying employer payroll taxes on wage payments made pursuant to the Settlement Agreement in addition

1 to the Maximum Settlement Amount.

2 c. *No Other Amounts.* HACIENDA is under no obligation under this Settlement
3 Agreement to pay, and shall not pay, anything other than the Maximum Settlement Amount and the
4 employer payroll taxes referred to above.

5 d. *Escalator:* The Maximum Settlement Amount was calculated based on the
6 premise that there are approximately 43,465 workweeks. In the event the actual number of
7 workweeks in the settlement is greater than 10% of this estimate, then the Maximum Settlement
8 Amount will be increased by the same proportion. For instance, if the actual number of workweeks
9 in the settlement is 12% greater than 43,465, HACIENDA agrees to increase the Maximum
10 Settlement Amount will be increased by 2%.

11 41. Funding and Disbursement of Payments Made by HACIENDA. HACIENDA shall
12 deposit the Maximum Settlement Amount, plus all employer taxes due under on wage payments to
13 be made under this Settlement Agreement, with the Settlement Administrator no later than thirty
14 (30) calendar days after the Effective Date. The Settlement Administrator shall disburse the
15 Maximum Settlement Amount to the recipients designated herein no later than 15 calendar days
16 after HACIENDA's payment above.

17 42. Payment of Class Counsel's Attorneys' Fees and Litigation Costs and Expenses.
18 HACIENDA agrees not to object to, undermine or oppose any application or motion by Class
19 Counsel for an award of attorneys' fees not to exceed one-third of the Maximum Settlement
20 Amount, which is currently estimated to be One Hundred Sixty-Six Thousand Six Hundred Sixty-
21 Six Dollars and Sixty-Six Cents (\$166,666.66) of the Maximum Settlement Amount, and reasonable
22 litigation-related costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents
23 (\$30,000), which is subject to review and final approval by the Court. If approved, the Court's
24 award of attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel shall
25 be paid from the Maximum Settlement Amount. Any portion of the amounts sought by Class
26 Counsel not awarded by the Court shall revert back to the Net Settlement Amount for distribution
27 to Participating Class Members, and will not revert to HACIENDA under any circumstance. The
28 attorneys' fees and litigation costs and expenses of Class Counsel include, without limitation, all

1 such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting
2 the settlement, securing Court approval of the settlement, and obtaining judgment in the Action.
3 Neither Plaintiff nor Class Counsel will be entitled to any other attorney fees or costs from
4 HACIENDA other than awarded by the Court pursuant to this Settlement Agreement. Class Counsel
5 shall be solely and legally responsible to pay all applicable taxes on the payments made pursuant to
6 this paragraph. IRS Form 1099 shall be provided to Class Counsel for the payments made pursuant
7 to this paragraph.

8 43. Service Award. HACIENDA agrees not to oppose or object to any application or
9 motion for a Service Award to the Class Representative in an amount equal to or less than Seven
10 Thousand Five Hundred Dollars and Zero Cents (\$7,500), subject to court approval, which if
11 approved shall be payable from the Maximum Settlement Amount and shall be in addition to
12 payment of the Individual Settlement Payment payable to him, and is further consideration for
13 settling this matter and in exchange for the release of all claims by Participating Class Members.
14 The Settlement Administrator shall issue an IRS Form 1099 for the Service Award. The Class
15 Representative shall be solely and legally responsible to pay any and all applicable taxes on the
16 payment made pursuant to this paragraph. Any reduction in the amount of the Service Award by
17 the Court shall remain in the Net Settlement Amount to be distributed to Participating Class
18 Members.

19 44. PAGA Payment. The Parties agree that Twenty Thousand Dollars and Zero Cents
20 (\$20,000) shall be allocated to settle the claims pursuant to the PAGA. Of this amount, seventy-
21 five percent (75%) or Fifteen Thousand Dollars and Zero Cents (\$15,000) shall be made payable to
22 the LWDA and twenty-five percent (25%) or Five Thousand Dollars and Zero Cents (\$5,000) shall
23 be distributed to PAGA Group Members as part of the Net Settlement Amount. The amount of any
24 reduction of the PAGA Payment by the Court shall remain in the Net Settlement Amount to be
25 distributed to Participating Class Members.

26 45. Settlement Administration Costs. Subject to Court approval, the Parties have agreed
27 that Phoenix Settlement Administrators will serve as a neutral third-party claims or settlement
28 administrator to perform all acts required by the Settlement Agreement. The Parties each represent

1 that they do not have any financial interest in the Settlement Administrator or otherwise have a
2 relationship with the Settlement Administrator that could create a conflict of interest. The
3 Settlement Administrator shall be paid for the Settlement Administration Costs. Settlement
4 Administration Costs are expected to total no more than Fifteen Thousand Dollars and Zero Cents
5 (\$15,000). Any portion of the Settlement Administration Costs which is not used shall be returned
6 to the Net Settlement Amount for pro rata distribution to Participating Class Members, and will not
7 revert to HACIENDA under any circumstance. The Settlement Administration Costs shall be paid
8 from the Maximum Settlement Amount and shall cover all costs of the administration of the
9 settlement. No fewer than ten (10) calendar days prior to the filing of the Final Approval Motion,
10 the Settlement Administrator shall provide the Court and all counsel for the Parties with a statement
11 detailing the Settlement Administration Costs. The Parties agree to cooperate in the settlement
12 administration process and to make all reasonable efforts to control and minimize the costs and
13 expenses incurred in the administration of the settlement. An IRS Form 1099 shall be issued to the
14 Settlement Administrator.

15 46. Net Settlement Amount. The Net Settlement Amount shall be available for
16 distribution to Participating Class Members and PAGA Group Members in accordance with the
17 notice procedure and formula set forth in this Settlement Agreement.

18 **IV. DUTIES OF THE PARTIES BEFORE PRELIMINARY APPROVAL AND**
19 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

20 47. Promptly after the execution of this Settlement Agreement, Class Counsel shall move
21 the Court for Preliminary Approval of the Settlement and obtain entry of an order accomplishing
22 the following:

- 23 a. Provisionally certifying the Action under California law as a class action for
24 purposes of this settlement only;
- 25 b. Preliminarily approving the settlement subject only to objections of Class
26 Members, the terms of the Parties' Settlement Agreement, and final approval by the Court;
- 27 c. Approving as to form and content the proposed Notice of Settlement attached
28 hereto as Exhibit 1;

1 d. Directing the mailing of the Notice of Settlement by first-class mail to the
2 Class Members;

3 e. Preliminarily appointing ADAMS as Class Representative and Plaintiff's
4 Counsel as Class Counsel (only for purposes of effectuating and implementing this Settlement
5 Agreement);

6 f. Preliminarily approving the application for payment of reasonable attorneys'
7 up to One-Third of the Maximum Settlement Amount, but not to exceed One Hundred Sixty-Six
8 Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$166,666.66); and reimbursement of
9 reasonable litigation-related costs and expenses not to exceed Thirty Thousand Dollars and Zero
10 Cents (\$30,000), payable to Class Counsel;

11 g. Preliminarily approving the Service Award to the Class Representative in an
12 amount equal to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500);

13 h. Preliminarily approving settlement administration services by Settlement
14 Administrator and its estimated Settlement Administration Costs of up to Fifteen Thousand Dollars
15 and Zero Cents (\$15,000).

16 i. Preliminarily approving the allocation of civil penalties pursuant to PAGA in
17 the amount of Twenty Thousand Dollars and Zero Cents (\$20,000), seventy-five percent (75%) of
18 which or Fifteen Thousand Dollars and Zero Cents (\$15,000) shall be payable to the LWDA and
19 twenty-five percent (25%) of which or Five Thousand Dollars and Zero Cents (\$5,000) shall be
20 distributed to PAGA Group Members from the Net Settlement Amount; and

21 j. Scheduling a hearing for Final Approval on the question whether the
22 proposed settlement should be finally approved as fair, reasonable and adequate to Class Members.

23 k. The form and content of the proposed Preliminary Approval order is attached
24 as Exhibit 2 to this Settlement Agreement.

25 48. ADAMS shall submit this Settlement Agreement in support of the Motion for
26 Preliminary Approval. Class Counsel shall not file said motion or any other documents associated
27 with same unless and until Defendant's Counsel has reviewed the contents and afforded an
28 opportunity to comment.

1 49. ADAMS shall also submit this Settlement Agreement to the LWDA (as required by
2 Labor Code § 2699(1)(2)).

3 50. Class Counsel will file a Motion for Final Approval of the Settlement and supporting
4 documents with the Court no later than sixteen (16) court days prior to the Final Approval Hearing.
5 Supporting documents shall include, but are not limited to: (a) a declaration by the Settlement
6 Administrator of due diligence and proof of mailing of the Notice of Settlement required to be
7 mailed to Class Members by this Settlement Agreement, and of the delivery results of the Settlement
8 Administrator's mailings, including tracing and re-mailing efforts; and (b) a proposed Order and
9 Judgment granting Final Approval. Class Counsel will send Defendant's Counsel the final approval
10 motion for review and approval prior to the filing of same. Defendant's Counsel shall have at least
11 five (5) business days in which to review and comment on the language of the Motion for
12 Preliminary Approval and the Motion for Final Approval.

13 51. HACIENDA will not object to or oppose Preliminary or Final Approval of the
14 settlement, including application by Class Counsel for the Service Award, attorneys' fees and
15 reimbursement of litigation-related costs and expenses as set forth above, provided the motions do
16 not deviate from the terms of this Settlement Agreement.

17 52. Class Counsel will submit with the motion for Final Approval a proposed Order and
18 Judgment granting Final Approval. The proposed Order and Judgment granting Final Approval shall
19 include the following findings and orders:

- 20 a. Approving the settlement, adjudging the terms thereof to be fair, reasonable
21 and adequate, and directing that its terms and provisions be carried out;
- 22 b. Approving payment of the Service Award to the Class Representative;
- 23 c. Approving Class Counsel's application for an award of reasonable attorneys'
24 fees and reimbursement of reasonable litigation-related costs and expenses;
- 25 d. Approving the Settlement Administration Costs;
- 26 e. Approving payment of civil penalties to the LWDA and the PAGA Group
27 Members;
- 28 f. Ordering the payment of Individual Settlement Payments in accordance with

the terms of this Agreement;

g. Listing the individuals who opted-out of the Settlement and will not be included in the releases or bound by the Judgment.

h. Entering Final Approval releasing all Released Claims of the Participating Class Members against all Released Parties;

i. Entering judgment in this Action in accordance with this Settlement Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h);

j. Requiring the Settlement Administrator to post a copy of the Judgment on its website for a period of at least 30 days from the date the Judgment is executed in compliance with Cal. Rules of Court, Rule 3.771(b); and

k. Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the settlement and the Court's orders; and

l. The form and content of the proposed Order and Judgment granting Final Approval is attached as Exhibit 3 to this Settlement Agreement.

V. DUTIES OF THE PARTIES AFTER FINAL APPROVAL

53. Following entry of the Court's Order and Judgment granting Final Approval of the Settlement Agreement, the Parties will each act to assure its timely execution and the fulfillment of all its provisions, including, but not limited to the following:

a. Class Counsel will immediately file and serve a written Notice of Entry of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service, on any person who objected to the settlement in writing or at the hearing on the Motion for Final Approval;

b. Should an appeal be taken from the Order and Judgment granting Final Approval of the Settlement Agreement, all Parties will support the Order and Judgment granting Final Approval on appeal;

c. Class Counsel and Defendant's Counsel will reasonably assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and PAGA Group Members entitled to payments from the Net Settlement Amount and assuring delivery of such payments;

d. Class Counsel and Defendant's Counsel will reasonably assist the Settlement Administrator as needed or requested in responding to late requests for payments from the Net Settlement Amount;

e. Class Counsel and Defendant's Counsel will ensure that the Settlement Administrator will certify to the Court completion of all payments required to be made by this Settlement Agreement.

VI. PROCEDURE AND ADDITIONAL TERMS

54. Notice Procedure. The Settlement Administrator shall be responsible for the following notice procedure:

a. *Delivery of the Class List.* Within Fourteen (14) calendar days from Class Counsel providing notice to Defendant's Counsel that the order granting preliminary approval has been provided to the Settlement Administrator, HACIENDA shall provide the Class List to the Settlement Administrator. The Class List shall contain (to the extent available in HACIENDA's business records) Class Members' full name, last known addresses, social security numbers, and dates of employment as non-exempt, hourly-paid employees of HACIENDA in California during the Class Period. The Class List information shall remain confidential and shall not be disclosed to anyone, including Class Counsel, except to carry out reasonable efforts described below, or pursuant to express written authorization by HACIENDA. The Settlement Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of the confidential information. The Settlement Administrator will perform address updates and verifications as necessary prior to the first mailing.

b. *Notice.* A notice of pendency of class action, proposed settlement and hearing date for Court approval (previously defined as Notice of Settlement), substantially in the form attached hereto as Exhibit 1 and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members (in English and Spanish), by first class mail, within 14 (14) calendar days after receipt of the Class List. The Notice of Settlement shall be sent via regular First Class U.S. Mail, using the most updated mailing addresses, and advise Class Members of the terms of the settlement, their ability to object to the settlement in writing and/or in person, and their ability

1 to submit a Request for Exclusion. Prior to the mailing of the Notice of Settlement, the Settlement
2 Administrator shall run the names of all Settlement Class members through the National Change of
3 Address (“NCOA”) database to determine any updated addresses for Class Members and update the
4 address of any Class Member for whom an updated address was found through the NCOA search.
5 The Notice of Settlement will further inform Class Members of the Court-established deadlines for
6 filing objections and requesting to be excluded from the Class. The Notice of Settlement will also
7 include the calculation of Workweeks during the applicable Class Period and calculation of the Class
8 Member’s estimated payment (which will be based upon the assumption that the requests for
9 attorney’s fees and costs and the Service Award are awarded in full).

10 c. *Procedure for Lost and Undeliverable Notices.* Any Notice of Settlement
11 returned to the Settlement Administrator as non-delivered on or before the Notice Deadline shall be
12 sent to the forwarding address affixed thereto, if a forwarding address is provided. If no forwarding
13 address is provided, the Settlement Administrator shall promptly, but no later than five (5) business
14 days of receiving notice that the Notice of Settlement was undeliverable, attempt to determine a
15 correct mailing address using a skip-trace, or similar search, using the name, address and/or social
16 security number of the Class Member involved, and promptly re-mail the Notice of Settlement. If
17 after the Notice of Settlement is still returned to the Settlement Administrator as non-deliverable
18 after re-mailing, that individual will be deemed a Participating Class Member for purposes of the
19 Released Claims (as defined below), and the Settlement Administrator will have no further
20 obligation to obtain the Class Member’s current address. The Notice Deadline for any Class
21 Member who is re-mailed a Notice of Settlement shall be extended fifteen (15) calendar days from
22 the date of the re-mailing or the original forty-five (45) calendar day deadline, whichever is later.

23 55. Request for Exclusion Procedure. The Notice of Settlement shall provide Class
24 Members with instructions on how to exclude themselves or “opt out” if they do not wish to
25 participate in this settlement.

26 a. Class Members who wish to opt out of this settlement must mail a written
27 request to be excluded from the Settlement (“Request for Exclusion”) to the Settlement
28 Administrator no later than forty-five (45) calendar days after the initial mailing of the Class Notice,

1 unless extended pursuant to a re-mailing, or unless the Court requires a longer period, in which case
2 the Court-ordered deadline period will apply. To be valid, a Request for Exclusion must include the
3 Class Member's name, signature, the last four digits of their Social Security Number, and a clear
4 statement indicating they wish to be excluded from the settlement. In order to be valid, a Class
5 Member's Request for Exclusion must be postmarked, faxed, or e-mailed to the Settlement
6 Administrator no later than the Notice Deadline.

7 b. Within five (5) calendar days after receipt by the Service Administrator of
8 each timely-submitted Request for Exclusion, the Service Administrator will send a deficiency
9 notice to such Class Members requesting exclusion and note any irregularities in the Request for
10 Exclusion (such as failure to sign or include last four (4) digits of the Class Member's social security
11 number). The deficiency notice will provide the Class Members no more than five (5) calendar days
12 from the mailing of the deficiency notice to resubmit a revised Request for Exclusion that cures all
13 deficiencies. The failure of a Class Member to cure all deficiencies in a timely manner shall
14 invalidate the Request for Exclusion and will not be subject to cure.

15 c. A Class Member who does not properly and timely submit a Request for
16 Exclusion of the Settlement Agreement in the manner and by the deadline specified above will
17 automatically become a Participating Class Member and will be bound by all terms and conditions
18 of the Settlement Agreement, including its release of claims, if the Settlement Agreement is
19 approved by the Court, and be bound by the Final Approval Order. In consideration for settlement
20 and release of all claims of the Participating Class Members against HACIENDA, each Participating
21 Class Member will receive a pro rata share of the Net Settlement Amount.

22 d. A Class Member who properly and timely submits a Request for Exclusion
23 of the Settlement Agreement will not become a Participating Class Member, will not be bound by
24 the Settlement Agreement, and will not have a right to appear at the Final Approval hearing to have
25 any objections to the settlement heard by the Court.

26 e. To the extent any Class Member submits a Request for Exclusion, that Class
27 Member's unclaimed portion shall be reallocated to the Net Settlement Amount. Increases to
28 Participating Class Member payments shall be allocated on a proportional basis based on the size of

each Participating Class Member's Workweeks.

f. Counsel for the Parties shall not discourage any Class Member from participating in, objecting to or opting out of the settlement.

g. If more than ten percent (10%) of Class Members timely and properly submit a Request for Exclusion, then HACIENDA shall have the right, in its sole discretion, to void and revoke the Settlement Agreement and its stipulation to class certification. All signatories and their counsel must not encourage opt-outs. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means. Objective statements to Class Members who call Class Counsel with inquiries regarding the settlement, or the exercise of Class Counsel's ethical obligations, shall not be deemed a violation of the prohibitions contained herein. In the event of such a rescission, no party may use the fact that the Parties agreed to settle this case as evidence of HACIENDA's liability in this Action or the lack thereof. If HACIENDA elects its option to void the Settlement Agreement pursuant to this paragraph, HACIENDA will be liable for all settlement administration costs incurred to date.

h. The Settlement Administrator will notify the Parties of the total number of valid Requests for Exclusion forms and identify the individuals who submitted a request for exclusion within ten (10) calendar days after the Notice Deadline. HACIENDA shall have five (5) business days to notify Class Counsel in writing of HACIENDA's intent to revoke the Settlement Agreement, including conditional class certification.

i. Class Members who are also PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the settlement. PAGA penalty settlement payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Group Members including to those Class Members who are PAGA Group Members who submitted a request for exclusion.

56. Objection Procedure. Class Members who wish to object to this settlement should notify the Settlement Administrator in writing, via mail, e-mail, or fax, that they object to the settlement by the Notice Deadline. In order to be valid, a Class Member's objection to the settlement must be postmarked, faxed, or e-mailed to the Settlement Administrator no later than the Notice

Deadline. The Settlement Administrator shall notify and submit a copy of the objection to Class Counsel and Defendant's Counsel forthwith and Class Counsel shall lodge a copy of the objection with the Court. Any objection sent to the Settlement Administrator must be postmarked no later than the Notice Deadline, unless the Court requires a longer period, in which the Court ordered objection period will apply. The objection should provide the name of the Class Member, all facts and reasons why the Class Member is objecting to the settlement along with any legal authority, and signed by the Class Member. Class Members shall be permitted to rescind their objections in writing by submitting a rescission statement to the Settlement Administrator not later than one (1) business day before the Court's Final Approval hearing or as otherwise ordered by the Court. Whether or not they timely submit a written objection, Class Members may appear at the Final Approval hearing to have their objections heard by the Court.

57. Disputed Information on Notice of Settlement. Each Class Member shall have an opportunity to dispute the employment dates and number of Workweeks attributed to him or her as identified in the Class Notice. To the extent a Class Member disputes the employment dates or number of Workweeks identified and listed in the Class Notice, the Class Member may produce evidence to the Settlement Administrator showing that such information is inaccurate. In order to be valid, a Class Member's dispute the employment dates and number of Workweeks, and the evidence in support of such dispute, must be received by the Settlement Administrator no later than the Notice Deadline. Absent evidence rebutting HACIENDA's records, HACIENDA's records will be presumed determinative. If the Defense Counsel and Class Counsel cannot agree the dispute will be submitted to the Court.

58. The Settlement Terms Bind All Class Members Who Do Not Submit a Timely and Valid Request for Exclusion. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion consistent with the terms of this Settlement Agreement shall be bound by all of its terms, including those pertaining to the Released Claims (as defined below), as well as any Final Approval that may be entered by the Court when it grants Final Approval of the settlement.

59. Certification Reports Regarding Requests for Exclusion, Disputes, and

1 Undeliverable Notices. The Settlement Administrator shall provide Defendant's Counsel and Class
2 Counsel a weekly report which certifies: (a) the number of Class Members who have submitted a
3 valid or defective Request for Exclusion; (b) the number of Class Member who have disputed the
4 employment dates and number of Workweeks contained in their Notice of Settlement; (c) any
5 objections received by Class Members; and (d) the number of returned, undeliverable and/or re-
6 mailed Notices of Settlement. Additionally, the Settlement Administrator shall provide to
7 Defendant's Counsel and Class Counsel any updated reports regarding the administration of the
8 Settlement Agreement as needed or requested.

9 60. Individual Settlement Payment Calculations. The Settlement Administrator shall
10 determine the eligibility for, and the amounts of, any Individual Settlement Payments under the
11 terms of this Settlement Agreement. Should any question arise regarding the determination of
12 eligibility for participation in the settlement or the amount of any Individual Settlement Payment
13 under the terms of this Settlement Agreement, Class Counsel and Defendant's Counsel will meet
14 and confer and attempt to reach agreement. Any unresolved disputes concerning the administration
15 of the Settlement Agreement will be resolved by the Court, under the laws of the State of California.

16 61. Method of Calculating the Individual Settlement Payments: Individual Settlement
17 Payments will be calculated as follows:

18 a. *PAGA Group Members.* The Settlement Administrator will calculate the total
19 Workweeks for all PAGA Group Members by adding the number of workweeks worked by each
20 PAGA Group Member during the PAGA Period. The amount that each PAGA Group Member will
21 be eligible to receive will be calculated by dividing each PAGA Group Member's individual
22 Workweeks by the total Workweeks of all PAGA Group Members, and multiplying the resulting
23 fraction by Five Thousand Dollars and Zero Cents (\$5,000). The Settlement Administrator will
24 determine the total number of qualifying Workweeks for each PAGA Group Member which will be
25 finalized after approval by the Parties.

26 b. *Participating Class Members.* The Settlement Administrator will calculate
27 the total Workweeks for all Participating Class Members by adding the number of workweeks
28 worked by each Participating Class Member during the Class Period. The amount that each

Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount less the Five Thousand Dollars and Zero Cents (\$5,000). The Settlement Administrator will determine the total number of qualifying Workweeks for each Participating Class Member which will be finalized after approval by the Parties.

c. *Calculation of Individual Settlement Payment.* For Participating Class Members who are also PAGA Group Members the Individual Settlement Payment will be the sum of the amounts calculated for that Class Member in paragraphs 60.a. and 60.b. For Participating Class Members who are not also PAGA Group Members the Individual Settlement Payment will be the amount calculated for that Class Member in paragraph 60.b. For PAGA Group Members who are not also Participating Class Members, the Individual Settlement Payment will be the amount calculated for that PAGA Group Member in paragraphs 60.a. The Settlement Administrator will determine the amounts of the payments to each Class Member will be finalized after approval by the Parties.

62. Allocation and Tax Treatment of Individual Settlement Payments. Individual Settlement Payments shall be allocated as follows: One hundred percent (100%) of the PAGA Group Members share of the PAGA Payment shall be civil penalties; Twenty Percent (20%) of the Individual Settlement Payment (excluding any portion of the share of the PAGA Payment) to Participating Class Members as wages; Forty Percent (40%) of the Individual Settlement Payment (excluding any portion of the share of the PAGA Payment) to Participating Class Members as non-wage statutory damages and interest; and Forty Percent (40%) of the Individual Settlement Payment (excluding any portion of the share of the PAGA Payment) to Participating Class Members as penalties. Portions of each Individual Settlement Payment allocated as wages will be reported on an IRS Form W-2. Portions allocated as non-wage statutory damages and interest, and those portions allocated as PAGA penalties, will be reported on an IRS Form 1099.

63. Payment of Individual Settlement Payments. The Settlement Administrator shall have the authority and obligation to make all payments, credits and disbursements, calculated in

1 accordance with the methodology set forth in this Settlement Agreement and orders of the Court.
2 The Settlement Administrator's duties will include reporting payment of the Individual Settlement
3 Payments to all required taxing and other authorities, taking appropriate withholding from the
4 Individual Settlement Payments, and issuing the appropriate IRS Forms W-2 and 1099. No person
5 shall have any claim against HACIENDA, Defendant's Counsel, ADAMS, Class Counsel, the
6 Settlement Administrator, or any Participating Class Member and/or PAGA Group Member based
7 on distributions and payments made in accordance with this Settlement Agreement.

8 64. No Credit Toward Employer Provided Benefit Plans. All Individual Settlement
9 Payments to Participating Class Members and PAGA Group Members shall be deemed to be income
10 to such Participating Class Members or PAGA Group Members solely in the year in which such
11 awards actually are received by the Participating Class Members and PAGA Group Members. It is
12 expressly understood and agreed that the receipt of such Individual Settlement Payments will not
13 entitle any Participating Class Member or PAGA Group Member to additional compensation or
14 benefits under any company bonus, paid time off (including vacation and sick leave), or other
15 compensation or benefit plan or agreement in place during the period covered by the Settlement
16 Agreement, nor will it entitle any Participating Class Member or PAGA Group Member to any
17 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is
18 the intent of this Settlement Agreement that the Individual Settlement Payments provided for in this
19 Agreement are the sole payments to be made by HACIENDA to the Participating Class Members
20 and PAGA Group Members in connection with this Settlement Agreement, and that the Participating
21 Class Members and PAGA Group Members are not entitled to any new or additional compensation
22 or benefits as a result of having received the Individual Settlement Payments (notwithstanding any
23 contrary language or agreement in any benefit or compensation plan document that might have been
24 in effect during the period covered by this Settlement Agreement).

25 65. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT
26 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
27 PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING
28 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO

1 PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN
2 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
3 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY
4 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
5 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
6 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
7 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
8 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
9 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
10 SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER
11 PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
12 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
13 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
14 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
15 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS
16 THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
17 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
18 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
19 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
20 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

21 66. Non-Negotiated Settlement Checks. Participating Class Members and PAGA Group
22 Member must cash each of their Individual Settlement Payment checks within one hundred eighty
23 (180) calendar days after they are mailed by the Settlement Administrator. The Parties agree that
24 any uncashed checks, subject to Court approval, shall be distributed to the Controller of the State of
25 California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.*
26 for the benefit of those Participating Class Members and PAGA Group Members who did not cash
27 their checks until such time that they claim their property. The Parties agree that this disposition
28 results in no "unpaid residue" under California Civil Procedure Code section 384, as the entire Net

1 Settlement Amount will be paid out to Participating Class Members and PAGA Group Members.

2 67. Settlement Administrator's Final Report(s). Not less than ten (10) calendar days
3 after the Notice Deadline, the Settlement Administrator shall report to Defendant's Counsel and
4 Class Counsel: (i) the names of individuals who opted-out of the settlement; (ii) the Individual
5 Settlement Payments owed to each Participating Class Member and/or PAGA Group Member; and
6 (iii) the final number of Class Members who have submitted objections and/or valid Requests for
7 Exclusion requests from the settlement. Upon completion of administration of the settlement, the
8 Settlement Administrator will provide a written declaration under oath to certify such completion to
9 the Court and counsel for all Parties. Additionally, once HACIENDA fully funds the Maximum
10 Settlement Amount and payroll taxes, the Settlement Administrator will provide a written
11 declaration under oath to certify HACIENDA's full and final satisfaction of the Maximum
12 Settlement Amount and payroll taxes and for HACIENDA's use and records.

13 68. Release of Claims. Upon the funding of the Maximum Settlement Amount and all
14 applicable employer-side payroll taxes, and except as to such rights or claims as may be created by
15 this Settlement Agreement, each and every Participating Class Member, on behalf of themselves
16 and their heirs and assigns, releases the Released Parties from the Released Claims that arose during
17 the Class Period. A Participating Class Member's cashing of the settlement check will be considered
18 a consent and opt-in to the settlement of all federal wage and hour claims under the FLSA which
19 are encompassed within these Released Claims, and each Participating Class Member who cashes
20 his or her settlement check will waive his or her rights to bring such claims under the FLSA which
21 arose during the Class Period. A Participating Class Member who does not cash his or her settlement
22 check will retain all rights and claims under the FLSA. However, the settlement will still discharge
23 and extinguish the claims described herein under California law, including those for Participating
24 Class Members who do not cash their settlement checks or who do not opt out of the settlement.

25 69. Release of PAGA Claims. Upon the funding of the Maximum Settlement Amount
26 and all applicable employer-side payroll taxes, and except as to such rights or claims as may be
27 created by this Settlement Agreement, each and every PAGA Group Member, on behalf of
28 themselves and their heirs and assigns, and Plaintiff, on behalf of the State of California, releases

1 the Released Parties from the Released PAGA Claims that arose during the PAGA Period.

2 70. General Release of Any and All Claims of Any Kind by Class Representative Only.

3 Upon the funding of the Maximum Settlement Amount and all applicable employer-side payroll
4 taxes, the Class Representative releases the Released Claims against the Released Parties, and makes
5 the additional following General Release in favor of the Released Parties:

6 a. The Class Representative individually hereby unconditionally waives and
7 forever releases, waives, discharges, any and all demands, damages, debts, liabilities, contracts,
8 obligations, actions, causes of action and claims of every kind, nature, and description whatsoever,
9 whether now known or unknown, suspected or unsuspected, including in equity or otherwise, which
10 he ever had or now has against the Released Parties arising or accruing at any time prior to the
11 Effective Date, including without limitation without limitation any matter, cause or claim arising
12 out of or related to facts or events occurring prior to the execution of this Settlement Agreement,
13 and/or related to ADAMS' employment with HACIENDA and his separation therefrom. At a
14 minimum, the claims released by the Class Representative include but are not limited to: (a) any
15 claims that were or could have been brought under California Labor Code sections 132a, 201, 202,
16 203, 204, 216, 218, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 432.5, 510, 512, 558, 1050, 1054, 1194,
17 1194.2, 1197, 1198, 2698 et seq., 2800, et seq., the applicable Industrial Welfare Commission Wage
18 Orders, the FLSA, and all related or corresponding federal laws, and all implementing regulations
19 and interpreting guidance; (b) any claims that were or could have been brought under California
20 Corporations Code, and California Business and Professions Code, including but not limited to
21 California Business and Professions Code section 17200 et seq. as unlawful, fraudulent or
22 misleading based on the claims, facts and allegations alleged in the Action (including, but not limited
23 to, claims of conduct unlawful under state or federal law); (c) any other causes of action, including
24 those seeking premiums, penalties, interest, punitive damages, costs, attorneys' fees, injunctive
25 relief, declaratory relief, or accounting, whether such causes of action are in tort, contract, equity,
26 statute, or common law; (d) any claims under the Fair Employment and Housing Act, Americans
27 with Disabilities Act, Age Discrimination in Employment Act, and Title VII of the Civil Rights Act
28 of 1964, and (e) any other claims the Class Representative could have made related to her

1 employment with HACIENDA. The Class Representative may hereafter discover facts in addition
2 to or different from those which he now knows or believes to be true, but stipulates and agrees that,
3 upon the funding of the Maximum Settlement Amount and all applicable employer-side payroll
4 taxes, he fully, finally, and forever settles and releases any and all claims, known or unknown,
5 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which
6 now exist, or heretofore have existed, upon any theory of law or equity and without regard to the
7 subsequent discovery or existence of such different or additional facts. ADAMS is deemed, by
8 operation of the Order granting Final Approval, to have agreed not to sue or otherwise make a claim
9 against any of the Released Parties for any claim.

10 b. The Class Representative acknowledges that he has had the opportunity to
11 review, and has reviewed, California Civil Code section 1542, which provides:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
15 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
16 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR
17 RELEASING PARTY.

18 Being fully informed of this provision of the Civil Code and understanding its provisions,
19 the Class Representative agrees to waive any rights under that section, and acknowledges that this
20 Settlement Agreement and the release contained herein extends to all claims that he has or might
21 have against the Released Parties, including those which are presently unknown to him or that he
22 does not know or suspect to exist, which, if known by ADAMS, might have affected his settlement
23 with, and release of, the Released Parties or might have affected his decision.

24 71. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to
25 postmark a request to be excluded from or objection to the Settlement Agreement, and with the
26 Court's permission, a Final Approval hearing shall be conducted to finally determine the fairness of
27 the settlement, along with the amounts properly payable for (a) Individual Settlement Payments; (b)
28 The Class Representative's Service Award; (c) Class Counsel's attorneys' fees and litigation costs
and expenses; (d) Settlement Administration Costs; and (e) the PAGA Payment. Class Counsel will
be responsible for drafting the attorneys' fees and costs application/motion to be heard at the Final

1 Approval hearing, which such application/motion may be part of the Class Representative's motion
2 for final approval.

3 72. Judgment and Continued Jurisdiction. Upon Final Approval of the settlement by the
4 Court or at the time of or subsequent to the Final Approval hearing, the Parties shall present a Final
5 Approval to the Court for approval and entry. After entry of the Final Approval, the Court shall
6 have continuing jurisdiction under Code of Civil Procedure section 664.6 solely for purposes of
7 addressing: (a) the interpretation and enforcement of the terms of the settlement, (b) Settlement
8 Administration matters, (c) failure to timely pay all amounts owed by Defendant, and (d) such
9 post-Final Approval matters as may be appropriate under court rules or as set forth in this Settlement
10 Agreement.

11 73. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use
12 their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the
13 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit either a
14 Request for Exclusion or written objections to the Settlement Agreement or to appeal from the
15 Court's Final Approval.

16 74. Interim Stay of Proceedings. Pending completion of the settlement process, the
17 Parties agree to a stay of all proceedings in the Action except such as are necessary to implement
18 the Settlement itself and the Parties agree to refrain from further litigation of this matter, except as
19 to proceedings necessary to implement and obtain an order granting Final Approval of the terms of
20 the settlement.

21 75. Nullification of Settlement Agreement. In the event: (i) HACIENDA timely and
22 properly revokes this Settlement Agreement as set forth in Section VI. Paragraph 55.(g) herein; (ii)
23 the Court does not finally approve the Settlement Agreement as provided herein; (iii) the Court does
24 not enter Final Approval as provided herein, which becomes final as a result of the occurrence of
25 the Effective Date; or (iv) the Settlement Agreement does not become final for any other reason,
26 this Settlement Agreement shall be null and void and any order or judgment entered by the Court in
27 furtherance of this Settlement Agreement shall be treated as void from the beginning. In such a
28 case, the Parties shall be returned to their respective statuses as of the date and time immediately

1 prior to the execution of this Settlement Agreement and the Parties shall proceed in all respects as
2 if this Settlement Agreement had not been executed (and the terms and existence of the Settlement
3 Agreement will be confidential). In the event an appeal is filed from the Court's Final Approval, or
4 any other appellate review is sought prior to the Effective Date, administration of the Settlement
5 Agreement shall be stayed pending final resolution of the appeal or other appellate review (unless
6 otherwise agreed to by the Parties).

7 76. No Admission. Nothing contained herein, nor the consummation of this Settlement
8 Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or
9 wrongdoing on the part of HACIENDA or any of the other Released Parties. HACIENDA
10 specifically denies any and all liability. Each of the Parties hereto has entered into this Settlement
11 Agreement with the intention of avoiding further disputes and litigation with the attendant
12 inconvenience and expenses. This Settlement Agreement is a settlement document and, pursuant to
13 California Evidence Code section 1152 and/or Federal Rule of Evidence 408 and/or any other
14 similar law, shall be inadmissible in evidence in any proceeding, except an action or proceeding to
15 approve the settlement, and/or interpret or enforce this Settlement Agreement, including but not
16 limited to use as a bar or affirmative defense, in whole or in part, to other or future claims or actions.

17 77. Construction. The Parties hereto agree that the terms and conditions of this
18 Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the
19 Parties, and that this Settlement Agreement shall not be construed in favor of or against any party
20 by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of
21 this Settlement Agreement.

22 78. Notices. Unless otherwise specifically provided herein, all notices, demands or other
23 communications given hereunder shall be in writing and shall be deemed to have been duly given
24 as of the third business day after mailing by U.S. registered or certified mail, return receipt requested,
25 addressed as follows:

26 <u>To Class Counsel:</u>	<u>To Defendant's Counsel:</u>
27	
28	

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79. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Participating Class Members and PAGA Group Members are not relying on any statement or representation by the Parties in this regard. Participating Class Members and PAGA Group Members understand and agree that Participating Class Members and PAGA Group Members will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

80. Headings. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement, and in no way, define, limit, extend, or describe the scope of this Settlement Agreement or any provision herein.

81. Amendment or Modification. Unless otherwise provided herein, this Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest, and approved by the Court.

82. Entire Agreement. This Settlement Agreement, any supplemental written agreement subsequently incorporated, and any attached exhibits constitute the entire Settlement Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

1 83. Authorization to Enter into Settlement Agreement. The signatories hereto represent
2 that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to
3 the terms and conditions hereof.

4 84. Mutual Full Cooperation. The Parties and their counsel will cooperate with each
5 other and use their best efforts to affect the implementation of the Settlement Agreement, including
6 but not limited to, execution of such documents and to take such other action as may be reasonably
7 be necessary to implement the terms of this Settlement Agreement. As soon as practicable after
8 execution of this Settlement Agreement, Class Counsel shall, with the assistance of HACIENDA
9 and Defendant's Counsel, take all necessary steps to secure the Court's Preliminary Approval and
10 Final Approval of this Settlement Agreement. In the event the Parties are unable to reach agreement
11 on the form or content of any document needed to implement the Settlement Agreement, or on any
12 supplemental provisions that may become necessary to effectuate the terms of this Settlement
13 Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

14 85. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
15 have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,
16 or encumber to any person or entity any portion of liability, claim, demand, action, cause of action,
17 or rights herein released and discharged except as set forth herein.

18 86. Binding on Successors and Assigns. This Settlement Agreement shall be binding on
19 the Parties' successors, assigns, and agents, and inures to the benefit of the Released Parties,
20 including HACIENDA and its past, present, and/or future owners, officers, directors, managing
21 agents, trustees, payroll processors, independent contractors, members, managers, shareholders,
22 employees, attorneys, insurers, assigns, shareholders, successors, predecessors and agents,
23 HACIENDA's past, present, and/or future parent, subsidiary, or affiliated entities, DBAs and
24 franchisors, and each of their owners, officers, directors, managing agents, trustees, payroll
25 processors, independent contractors, members, managers, employees, attorneys, insurers, assigns,
26 shareholders, successors, predecessors and agents.

27 87. Participating Class Member Signatories. It is agreed that because the Participating
28 Class Members are so numerous, it is impossible or impractical to have each Participating Class

Member execute this Settlement Agreement. The Notice of Settlement will advise all Class Members of the binding nature of the release and, upon Final Approval, such shall have the same force and effect as if this Settlement Agreement were executed by each Participating Class Member. Notice of Entry of Judgment shall be served by the Class Representative on HACIENDA.

88. California Law Governs. All terms of this Settlement Agreement shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

89. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves original signed counterparts.

90. The Class Representative's Waiver of Right to be Excluded and Object. The Class Representative agrees that by signing this Settlement Agreement, she is bound by the terms herein stated and further agrees not to request to be excluded from the settlement and agrees not to object to any of the terms of this Settlement Agreement. Any such letter requesting to be excluded from the settlement or objection shall therefore be void and of no force or effect. Efforts by the Class Representative to circumvent the terms of this paragraph shall be void and of no force or effect.

91. Confidentiality Preceding Preliminary Approval, Non-Reporting. The Class Representative and Class Counsel agree that the terms of this settlement (including, but not limited to, the Maximum Settlement Amount), the negotiations leading to this settlement, and all documents related to the settlement shall not be discussed with, advertised, marketed, publicized, published, reported, posted, or promoted to the public, except as necessary to effectuate and/or enforce the terms of this Settlement Agreement and its approval. The Class Representative and Class Counsel further will not publicize, post, market, advertise, or report, the terms of this Settlement Agreement and will not issue any press releases, except that the Class Representative and Class Counsel may disclose in legal proceedings, if and only as necessary a summary of the terms of the Settlement Agreement and may communicate with Class Members regarding the settlement, its terms, and its history (apart from settlement communications).

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Dated: *October 25, 2013*

HACIENDA POST ACUTE, INC.

By: *[Signature]*

John Ray Moore

Title: *President*

Dated:

JONATHAN ADAMS

By: _____
JONATHAN ADAMS

APPROVED AS TO FORM ONLY

Dated: October 26, 2023

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: *[Signature]*

Ann K. Smith

Sarkis A. Atoyan

Attorneys for Defendant Hacienda Post Acute, Inc.

Dated:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiff Jonathan Adams

Dated:

HACIENDA POST ACUTE, INC.

By: _____

Title:

Dated: Oct 18, 2023

JONATHAN ADAMS

By:  _____

Jon adams (Oct 18, 2023 17:00 PDT)

JONATHAN ADAMS

APPROVED AS TO FORM ONLY

Dated:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: _____

Ann K. Smith

Sarkis A. Atoyan

Attorneys for Defendant Hacienda Post Acute, Inc.

Dated: 10/18/2023

HAINES LAW GROUP, APC

By:  _____

Paul K. Haines

Sean M. Blakely

Alexandra R. McIntosh

Attorneys for Plaintiff Jonathan Adams