

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Subject to the approval of the Court, this Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff **Iris Franco**, acting in a private attorney general capacity, on behalf of the State of California on behalf of herself and all PAGA Settlement Employees, and Defendants **Acclaim Home Care, Inc. and Brookdale Senior Living Communities, Inc.** (collectively, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter entitled *Iris Franco v. Acclaim Home Care, Inc., et al.*, pending in the Napa County Superior Court of the State of California, Case No. 22CV001395.
2. “Complaint” means the operative pleading filed in the Action.
3. “Defendants” means Acclaim Home Care, Inc. (“Acclaim”) and Brookdale Senior Living Communities, Inc. (“Brookdale”), and includes any of Defendants’ past, present, and future officers, directors, employees, agents, board members, shareholders, attorneys, insurers, reinsurers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.
4. “Effective Date” of the Settlement means the date upon which the Court enters the order approving this Settlement.
5. “Gross Settlement Amount” is the sum of Two Hundred Forty-Seven Thousand Seven Hundred Dollars and Zero Cents (\$247,700.00), which represents the total amount payable by Defendant Acclaim under this Settlement Agreement for the release of the Released Claims and includes payments to all PAGA Settlement Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment to the Settlement Administrator, and payment to Plaintiff for Plaintiff’s Service Award.
6. “Individual PAGA Payment” means the pro rata amount to be paid to each PAGA Settlement Employee from the twenty-five percent (25%) portion of the PAGA Payment allocated to employees; such individual share to be based on the number of pay periods during which a PAGA Settlement Employee worked for Acclaim during the PAGA Period.
7. “LWDA” means the California Labor and Workforce Development Agency.
8. “LWDA Letters” means the letters Plaintiff submitted to the LWDA on August 10, 2022, and September 7, 2022.
9. “Net Settlement Amount” or “PAGA Payment” is the amount remaining to distribute to the LWDA and PAGA Settlement Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff’s Attorneys’ Fees of up to 35% of the Gross Settlement Amount (Eighty-Six Thousand Six Hundred Ninety-

Five Dollars and Zero Cents (\$86,695.00)); (b) Plaintiff's Costs up to Twelve Thousand Dollars and Zero Cents (\$12,000.00); (c) Plaintiff's Service Award up to Ten Thousand Dollars and Zero Cents (\$10,000.00); and (c) PAGA Settlement Administration costs currently estimated at Five Thousand Dollars and Zero Cents (\$5,000.00).

10. "Parties" means Plaintiff and Defendants.

11. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*

12. "PAGA Period" means the time period from August 10, 2021, through the Effective Date, or July 24, 2023, whichever occurs first. As of the execution of this Settlement Agreement, through March 31, 2023, Acclaim estimates there are approximately 3509 eligible pay periods worked during the PAGA Period by approximately 292 PAGA Settlement Employees. These numbers include direct employees of Acclaim, but not Brookdale.

13. "PAGA Representative Counsel" means Gaines & Gaines, APLC, located at 4550 East Thousand Oaks Boulevard, Suite 100, Westlake Village, California 91362.

14. "PAGA Settlement Employee" or "PAGA Settlement Employees" means and includes all current and former employees who worked for Acclaim in the State of California during the PAGA Period. Direct employees of Brookdale are not included in this Settlement.

15. "Plaintiff" means Iris Franco.

16. "Service Award" means the amount payable to Plaintiff in recognition of her efforts and work in prosecuting the Action and in exchange for her General Release, in the amount of Ten Thousand Dollars (\$10,000.00) to be approved by the Court.

17. "QSF" means qualified settlement fund.

18. "Released Claims" means all claims, rights, demands, liabilities, and causes of action for PAGA civil penalties, arising from or reasonably related to the claims which were asserted in the Action and Complaint under PAGA based on facts alleged in the operative Complaint in the Action and LWDA Letters, including a PAGA claim against Defendants for civil penalties on behalf of Plaintiff and the LWDA based on the following underlying Labor Code violations: 201, 202, 203, 204, 210, 221, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 2802, 2699, *et seq.*, violation of any Industrial Welfare Commission Order, and any other claims asserted in the Action and operative Complaint.

19. "Released Parties" means Acclaim Home Care, Inc., Brookdale Senior Living Inc., Brookdale Senior Living Communities, Inc., and their past, present, and future officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, franchisors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, and any individual or entity that could be jointly liable with Defendants.

20. "Settlement Administrator" means Phoenix Settlement Administrators.

21. "PAGA Settlement Administration Costs" means the cost, currently estimated at Five Thousand Dollars (\$5,000), to be paid to the Settlement Administrator for administering the Settlement, including sending checks and Settlement Notices to the PAGA Settlement Employees.

22. "Settlement Notice" means an explanatory letter to be sent by the Settlement Administrator to PAGA Settlement Employees, substantially in the form attached hereto as **Exhibit A**.

II. RECITALS

1. Acclaim employed Plaintiff during the PAGA Period.

2. On August 10, 2022, and September 7, 2022, Plaintiff provided written notice to the LWDA and Defendants pursuant to Labor Code section 2699.3 of *inter alia* alleged violations of the California Labor Code and Industrial Welfare Commission Orders.

3. On November 15, 2022, Plaintiff filed the Action, pursuant to PAGA, on behalf of the State of California and other aggrieved employees alleging multiple violations of the California Labor Code and Industrial Welfare Commission Wage Orders by Defendants.

4. The Parties have independently analyzed and investigated the facts and law relevant to this case through discovery, including, but not limited to, the employment policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters; timekeeping and payroll records for employees on whose behalf the Complaint and/or the LWDA Letters are asserted; and summaries of data pertaining to the number of employees allegedly affected by the policies, procedures, and practices implicated by the Complaint and/or the LWDA Letters.

5. After evaluating the strengths and weaknesses of their respective positions, after considering the time, expense, and risk associated with litigating this case to judgment, and after engaging in arm's-length settlement negotiations through informed counsel, the Parties agreed to fully and finally, and exclusively, resolve the Released Claims as to Plaintiff and the PAGA Settlement Employees, subject to Court approval.

6. This Settlement contemplates the entry of an Order by the Court approving the payment allocated for settlement of PAGA penalties to the LWDA, Plaintiff and PAGA Settlement Employees, and the dismissal with prejudice of the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission**. Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendants of any liability or wrongdoing as to Plaintiff, PAGA Settlement Employees or any other person, and Defendants specifically disclaim any such liability or wrongdoing. Defendants specifically disclaim any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her/their rights, or for any alleged violation of any order, law, statute, duty or contract. Defendant Brookdale Senior Living Communities, Inc. further disputes that it employed Plaintiff or any of the PAGA Settlement Employees. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant

inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Acclaim shall pay Two Hundred Forty-Seven Thousand Seven Hundred Dollars and Zero Cents (\$247,700.00) as the Gross Settlement Amount. Acclaim will not pay more than the Gross Settlement Amount, except as otherwise stated in this Agreement. Acclaim shall deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) business days after the Effective Date.

3. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to be distributed to the LWDA and PAGA Settlement Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Defendants will not oppose Plaintiff's request for Plaintiff's Attorneys' Fees of up to 35% of the Gross Settlement Amount (Eighty-Six Thousand Six Hundred Ninety-Five Dollars and Zero Cents (\$86,695.00)) and Plaintiff's Costs up to Twelve Thousand Dollars (\$12,000.00) incurred in prosecuting this Action. In the event the Court approves a payment of less than the amount of fees and costs requested by Plaintiff, the difference will be added to the PAGA Payment.

b. **Administration Cost.** Defendants will not oppose the Settlement Administrator's costs, currently estimated at Five Thousand Dollars (\$5,000), for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.

c. **Plaintiff's Service Award Payment.** Defendants will not oppose a request for service payment to Plaintiff in an amount up to Ten Thousand Dollars and Zero Cents (\$10,000.00) in recognition of her efforts and work in prosecuting this Action and in exchange for her General Release. In the event the Court approves a payment of less than this amount, the difference will be added to the PAGA Payment.

4. **PAGA Payment.** A portion of the PAGA Payment will be allocated to the LWDA and the remainder will be allocated to PAGA Settlement Employees in settlement of the Released Claims. The PAGA Payment will be subject to Court approval consistent with California Labor Code section 2699.3(b)(4). Upon approval, the PAGA Payment shall be allocated as follows:

a. Seventy-five percent (75%) will be paid to the LWDA, as required by California Labor Code section 2699(i).

b. Twenty-five percent (25%) will be paid to the PAGA Settlement Employees, divided on a pro rata basis among them and distributed by the Settlement Administrator as Individual PAGA Payments, as required by California Labor Code section 2699(i).

c. The payments will be reported as penalties on IRS Forms 1099 issued to the LWDA and each PAGA Settlement Employee. The Settlement Administrator will be responsible for issuing to PAGA Settlement Employees and PAGA Representative Counsel any 1099 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement.

5. **Representative PAGA Release.** As of the Effective Date, subject to Acclaim's full payment of the Gross Settlement Amount, all PAGA Settlement Employees and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiff, PAGA Settlement Employees, and the State of California shall be deemed to have, and by operation of the Order granting approval of the payment of the PAGA Payment as described in this Agreement, fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims. This release is limited to periods of employment with Acclaim in California during the PAGA Period.

6. **Released Claims.** Upon the Effective Date, Plaintiff and all PAGA Settlement Employees and the LWDA will be forever barred from pursuing any and all Released Claims against Acclaim in California during the PAGA Period. The LWDA or PAGA Settlement Employees may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, the LWDA and PAGA Settlement Employees shall be deemed to have, and by operation of the Court's Order approving Settlement shall have, fully, finally, and forever settled and released any and all of the Released Claims, without regard to the subsequent discovery or existence of such different or additional facts. It is the intent of the Parties that the Settlement approval order entered by the Court shall have full *res judicata* effect and be final and binding upon the LWDA and PAGA Settlement Employees regarding the Released Claims. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)*, 46 Cal.4th 969 (2009) and *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (2011), PAGA Settlement Employees shall be deemed to have released the Released Claims regardless of whether their settlement check is cashed or not.

Plaintiff's General Release. Upon the Effective Date, and subject to Acclaim's full payment of the Gross Settlement Amount, Plaintiff hereby fully and finally releases and discharges the Released Parties from any and all of the Released Claims and from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that Plaintiff had, now has, or may hereafter claim to have against the Released Parties arising out of, or relating in any way to, the Plaintiff's hiring by, employment with, separation of employment with, or otherwise relating to the Released Parties (collectively with Released Claims, "Plaintiff's Released Claims"), arising or accruing through the date of Plaintiff's signature on this Agreement. Carved out from – and specifically not included in – Plaintiff's Released Claims, are the claims alleged in the action titled *Franco v. Acclaim Home Care, Inc., et al.*, Napa County Superior Court, Case No. 23CV000447 (the "Excluded Claims"). These Excluded Claims are not released by this Agreement and shall proceed notwithstanding Plaintiff's signature on this hereto.

7. With the sole exception of the Excluded Claims, the Plaintiff's Released Claims include, but are not limited to, claims arising from or dependent on the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code § 17200 et seq.; the California Fair Employment and Housing Act, Cal. Gov't Code § 12900 et seq.; the California common law of contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Age

Discrimination in Employment Act (ADEA); the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; the Portal to Portal Act, 29 U.S.C. § 251 et seq.; other federal, state or local employment practices, legislation or regulations; federal or state common law; and/or retaliation, harassment, wrongful termination, or breach of express or implied contract or against public policy.

To effect a full and complete general release as described above, except with respect to the Excluded Claims, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows: **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Thus, except with respect to the Excluded Claims, which will not be released as part of this Settlement, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims.

8. **Filing of Request for Approval of PAGA Settlement by Plaintiff's Counsel.**

The Parties will cooperate in obtaining, through an unopposed or joint motion/stipulation, an order from the Court approving the terms of this Agreement at the earliest possible date following the execution of this Agreement. Plaintiff's counsel shall be responsible for filing either a joint or unopposed motion / stipulation for approval of the Settlement. Plaintiff shall provide the requisite notice of this Settlement Agreement to the LWDA on or before the date Plaintiff requests approval of this Settlement Agreement from the Court. If the Court approves this Settlement, the Parties shall request that the Court enter an Order approving the settlement.

As part of the request to approve the Settlement, Plaintiff shall submit a proposed order granting approval of this Settlement. The Order granting approval of the settlement shall provide for a dismissal, with prejudice, of the entire Action and the Complaint. The Court shall retain jurisdiction to enforce the terms of this Agreement. This Settlement is expressly conditioned upon the Court entering such an Order approving this Settlement as set forth herein.

IV. **ADMINISTRATION OF SETTLEMENT**

1. **Settlement Administrator.** The Settlement Administrator will be responsible for establishing a QSF and issuing payments and appropriate tax forms to PAGA Settlement Employees, the LWDA, and Plaintiff's counsel.

2. **Provision of Information for PAGA Settlement Employees.** Within fourteen (14) calendar days after the Effective Date, Acclaim will provide the information regarding the PAGA Settlement Employees to the Settlement Administrator. This information will include the name, most recently known address, social security number, and total pay periods worked for each

of the PAGA Settlement Employees during the PAGA Period. The list shall also include the sum total of all pay periods worked by PAGA Settlement Employees during the PAGA Period. As social security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

The Settlement Administrator will calculate the amount to be received by each PAGA Settlement Employee. Within five (5) calendar days of receiving the Gross Settlement Amount, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the estimated individual settlement payments to each PAGA Settlement Employee, and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for PAGA Settlement Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Settlement Employees' addresses.

Within ten (10) court days of receiving approval from counsel of the payment calculations as provided above, the Settlement Administrator will issue payments to: (a) PAGA Settlement Employees along with an explanatory letter ("Settlement Notice"); (b) the LWDA; (c) Plaintiff's counsel; (d) Plaintiff; and (e) itself.

4. **Undeliverable Notices.** Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or social security number of the PAGA Settlement Employees involved, and will then perform a single re-mailing. Individual PAGA Payment checks will remain negotiable for one hundred eighty (180) calendar days from issuance, and PAGA Settlement Employees will have one hundred eighty (180) calendar days from the date of issuance to cash their Individual PAGA Payment checks. If a PAGA Settlement Employee's check is returned to the Settlement Administrator with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly resend the check to that PAGA Settlement Employee to that address, but this re-mailing will not extend the 180-day period to cash a check. Funds represented by Individual PAGA Payment checks returned as undeliverable and those Individual PAGA Payment checks remaining un-cashed for more than one hundred eighty (180) calendar days after issuance will be paid to Court Appointed Special Advocates of Alameda County.

Defendants fully discharge their obligations to those PAGA Settlement Employees who are entitled to an Individual PAGA Payment through the Settlement Administrator's mailing of a check, regardless of whether such checks are actually received and/or negotiated by PAGA Settlement Employees.

5. **Accounting.** Within fifteen (15) calendar days of receiving approval from both Parties' counsels of the payment calculations, the Settlement Administrator will provide an

accounting under oath to the Parties of the amounts paid from the Settlement, via a declaration or otherwise.

6. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed one hundred percent (100%) as penalties and paid via IRS Form 1099 issued to each PAGA Settlement Employee. The Parties and their counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Escalator Clause.** As of the execution of this Settlement Agreement, through March 31, 2023, Acclaim estimates there are approximately 3509 eligible pay periods worked during the PAGA Period by approximately 292 PAGA Settlement Employees. Should the total number of pay periods or PAGA Settlement Employees through the end of the PAGA Period exceed these estimates by 20% or more, the Gross Settlement Amount shall increase proportionately for each additional pay period and/or PAGA Settlement Employee in excess of the 20% threshold. The greater increase (pay periods v PAGA Settlement Employees) will control the increase to the Gross Settlement Amount.

2. **Mutual Preparation and Drafting.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties through informed counsel and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

3. **No Impact on Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff or any PAGA Settlement Employee under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under or any other monetary entitlement under Defendants' sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently or on a going-forward basis, as salary, earnings, wages or any other form of compensation for the purposes of any Defendants' benefit plan, policy, or bonus program. Defendants retain the right, if necessary, to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

4. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, and successors.

5. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement, the Action, and Plaintiff's

claims, except as otherwise set forth specifically herein. This shall have no effect on, and will in no way limit, the attorneys' fees and costs associated with the prosecution of the Excluded Claims.

6. **Authority.** Defendants represent and warrant that the undersigned have the authority to act on behalf of Defendants and to bind Defendants to the terms of this Settlement Agreement. Plaintiff represents and warrants that Plaintiff has the authority to enter into this Settlement Agreement.

7. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California.

8. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim. This Settlement Agreement cannot be amended or modified except by a writing signed by the Parties hereto.

9. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions, without prejudice. Neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect.

10. **Dismissal and Continuing Jurisdiction.** After approval of this Settlement and dismissal of the Action, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

The Parties further agree that upon the occurrence of the dismissal of the Action pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and PAGA Settlement Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

11. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

12. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest.

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

14. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile, DocuSign, and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

15. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

16. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

17. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

18. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

19. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

20. **Dispute(s).** Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

21. **Non-Evidentiary Use.** Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other

action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

22. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

23. **No Public Comment.** Neither the Parties nor their counsel shall make or issue any public statements to the press or any other third party, nor post any information on websites or other public forums, concerning the Action in any way.

24. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

25. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

26. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. Nothing in this settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith.

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

[SIGNATURES ON FOLLOWING PAGE]

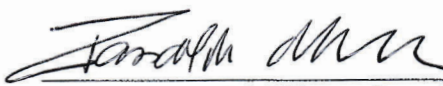
06 / 22 / 2023
Dated: June __, 2023

By:


Plaintiff Iris Franco

Dated: June 27, 2023

By:


Defendant Acclaim Home Care, Inc.
Randy De Leon

Dated: June __, 2023

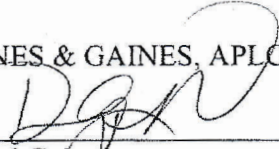
By:

Defendant Brookdale Senior Living Communities,
Inc.
Maralee Downey

Approved as to form:

Dated: June 27, 2023

GAINES & GAINES, APLC


Daniel Gaines
Attorneys for Plaintiff Iris Franco

LITTLER MENDELSON, P.C.

Dated: June 27, 2023


Michael W. Nelson
Attorneys for Defendant Acclaim Home Care, Inc.

LITTLER MENDELSON, P.C.

Dated: June __, 2023

Shannon Boyce
Attorneys for Defendant Brookdale Senior Living
Communities, Inc.

06 / 22 / 2023
Dated: June __, 2023

By: 
Plaintiff Iris Franco

Dated: June __, 2023

By: _____
Defendant Acclaim Home Care, Inc.
Randy De Leon

Dated: June __, 2023

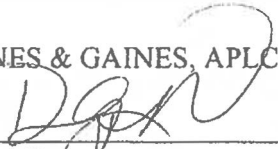
7/10/23

By: 
Defendant Brookdale Senior Living Communities,
Inc.
Maralee Downey

Approved as to form:

Dated: June ¹¹/₂₂, 2023

GAINES & GAINES, APLC


Daniel Gaines
Attorneys for Plaintiff Iris Franco

LITTLER MENDELSON, P.C.

Dated: June __, 2023

Michael W. Nelson
Attorneys for Defendant Acclaim Home Care, Inc.

LITTLER MENDELSON, P.C.

Dated: July 10, 2023

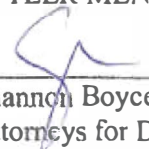

Shannon Boyce
Attorneys for Defendant Brookdale Senior Living
Communities, Inc.

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA**

IRIS FRANCO, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

ACCLAIM HOME CARE, INC., a
California corporation, BROOKDALE
SENIOR LIVING COMMUNITIES, INC., a
Delaware corporation, and DOES 1 through
10, inclusive,

Defendants.

Case No. 22CV001395

**NOTICE OF SETTLEMENT OF
PRIVATE ATTORNEYS GENERAL ACT
CLAIM (CAL. LABOR CODE § 2698 *ET
SEQ.*)**

You have been identified as an individual who worked for Defendant Acclaim Home Care, Inc. (“Defendant”) in California at any time between August 10, 2021 and [PAGA Period End Date] (“Aggrieved Employee”).

On November 15, 2022, Plaintiff Iris Franco (the “Plaintiff”) commenced a lawsuit in the Napa County Superior Court, case number 22CV001395, to recover civil penalties (the “Lawsuit”). Plaintiff alleges in the lawsuit that Defendant failed to pay all minimum and overtime wages due, failed to provide all meal and rest periods or premium compensation in lieu thereof, failed to timely pay all wages due during employment and upon separation of employment, failed to reimburse all business expenses, made unlawful deductions from wages, and failed to issue complete and accurate wage statements. For these alleged violations, Plaintiff seeks penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”).

Defendant denies Plaintiff’s allegations and disputes all of Plaintiff’s claims. The Lawsuit was litigated and following an investigation, the Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on _____ and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

As of the Effective Date, subject to Acclaim's full payment of the Gross Settlement Amount, all PAGA Settlement Employees and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Plaintiff, PAGA Settlement Employees, and the State of California shall be deemed to have, and by operation of the Order granting approval of the payment of the PAGA Payment as described in this Agreement, fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims. This release is limited to periods of employment with Acclaim in California during the PAGA Period. Upon the Effective Date, Plaintiff and all PAGA Settlement Employees and the LWDA will be forever barred from pursuing any and all Released Claims against Acclaim in California during the PAGA Period. The LWDA or PAGA Settlement Employees may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, the LWDA and PAGA Settlement Employees shall be deemed to have, and by operation of the Court's Order approving Settlement shall have, fully, finally, and forever settled and released any and all of the Released Claims, without regard to the subsequent discovery or existence of such different or additional facts. It is the intent of the Parties that the Settlement approval order entered by the Court shall have full *res judicata* effect and be final and binding upon the LWDA and PAGA Settlement Employees regarding the Released Claims. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)*, 46 Cal.4th 969 (2009) and *Cardenas v. McLane Foodservice, Inc.*, 796 F.Supp.2d 1246 (2011), PAGA Settlement Employees shall be deemed to have released the Released Claims regardless of whether their settlement check is cashed or not.

The Released Claims are all claims, rights, demands, liabilities, and causes of action for PAGA civil penalties, arising from or reasonably related to the claims which were asserted in the Action and Complaint under PAGA based on facts alleged in the operative Complaint in the Action and LWDA Letters, including a PAGA claim against Defendants for civil penalties on behalf of Plaintiff and the LWDA based on the following underlying Labor Code violations: 201, 202, 203, 204, 210, 221, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 2802, 2699, *et seq.*, violation of any Industrial Welfare Commission Order, and any other claims asserted in the Action and operative Complaint.

The "Released Parties" are Acclaim Home Care, Inc., Brookdale Senior Living Inc., Brookdale Senior Living Communities, Inc., and their past, present, and future officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, franchisors, parent companies, subsidiaries, affiliates, divisions, successors, agents, and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, and any individual or entity that could be jointly liable with Defendants.

If you have any questions, please contact Phoenix Settlement Administrators at (###) ###-####.