

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

THE WAND LAW FIRM, P.C.

Aubry Wand (SBN 281207)
100 Oceangate, Suite 1200
Long Beach, California 90802
Telephone: (310) 590-4503
Email: awand@wandlawfirm.com

*Attorneys for Plaintiff and the other
Aggrieved Employees*

[Additional Counsel Listed on Following Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

STANLEY MOSK COURTHOUSE

MARK HOWELL, an individual, on
behalf of the State of California,

Plaintiff,

v.

INFINITY HOSPICE AND
PALLIATIVE CARE INC., a California
corporation and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.: 23STCV10153

[Assigned for all purposes to the
Honorable Kerry Bensinger, Dept. 31]

**STIPULATION OF SETTLEMENT AND
RELEASE UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ.**

Action Filed: May 5, 2023
Trial Date: None Set

FOX ROTHSCHILD

Ketul Patel (SBN 251985)

Steven Gallagher (SBN 302881)

10250 Constellation Blvd., Suite 900

Los Angeles, California 90067

Telephone: (424) 285-7091

Email: kdpatel@foxrothschild.com

StevenGallagher@foxrothschild.com

Attorneys for Defendant, *Infinity Hospice and Palliative Care Inc.*

1 This Stipulation of Settlement and Release (“Agreement” or “Settlement”) under the
2 Private Attorneys General Act, California Labor Code section 2698 et seq. (“PAGA”), is made
3 by and between Mark Howell (“Plaintiff”), individually and as representative on behalf of
4 Aggrieved Employees as further defined herein and the State of California, and Infinity Hospice
5 and Palliative Care Inc. (“Infinity Hospice” or “Defendant”). Plaintiff and Defendant are
6 collectively referred to herein as the “Parties.”

7 **A. FACTUAL BACKGROUND**

8 1. This Settlement is made and entered into by and between Plaintiff and Defendant,
9 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties
10 expressly acknowledge that this Agreement is entered into solely for the purpose of
11 compromising significantly disputed claims and that nothing herein is an admission of liability
12 or wrongdoing by Defendant. Defendant denies that they are liable to Plaintiff or the Aggrieved
13 Employees and deny that they have violated any law.

14 2. On February 27, 2023, Plaintiff filed a notice with the Labor & Workforce
15 Development Agency (“LWDA”) alleging that Defendants Comfort Choice, Choice Health
16 violated Labor Code sections 201-203, 204, 210, 226, 226.2, 226.3, 226.7, 246, 248.1, 248.2,
17 248.6, 248.7, 510, 512, 558, 1174, 1174.5 1194, 1197, 1198, 2802, and 2810.5 (“PAGA Notice”).

18 3. On May 5, 2023, Plaintiff filed his Private Attorneys General Act (“PAGA”)
19 Complaint in Los Angeles County Superior Court, Case No: 23STCV10153, (hereinafter the
20 “Action”); seeking civil penalties predicated on Defendants’ alleged failure to provide meal and
21 rest periods, failure to pay overtime wages, minimum wages, and timely wages during
22 employment and upon discharge or termination, failure to maintain required records, failure to
23 provide accurate itemized wage statements, failure to indemnify employees for necessary
24 business expenditures, failure to provide California Supplemental COVID-19 sick leave, and
25 failure to provider notice of employer-related information.

26 4. On August 24, 2023, Plaintiff filed an amended notice with the Labor &
27 Workforce Development Agency (“LWDA”) alleging the same violations of the California Labor
28 Code against two additional Defendants, Infinity Hospice and Palliative Care Inc., and Temecula

1 Hospice and Palliative Care Inc.

2 5. On September 13, 2023, Defendants filed an answer to Plaintiff's representative
3 complaint denying all allegations in the Action and all claims of any wrongdoing whatsoever by
4 Defendants or any of their parents, subsidiaries, affiliates, divisions, agents, servants, or
5 employees for any claims.

6 6. The Parties attended mediation on March 12, 2024, with mediator Will Klatte,
7 Esq. The Parties reached a settlement of the Action as a result of the mediation.

8 7. The Parties recognize the risk, expense, and delay in continuing the Action, and
9 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
10 desire to settle, compromise, and discharge all disputes and claims arising from or relating to the
11 Action.

12 **B. DEFINITIONS**

13 1. "Action" means *Mark Howell v. Comfort Choice Hospice Care, Inc. et al.*, filed
14 on May 5, 2023, in the Superior Court of California, County of Los Angeles, Case No.
15 23STCV10153.

16 2. "Aggrieved Employees" means all non-exempt employees who worked for
17 Defendant, Infinity Hospice and Palliative Care Inc., in California from March 1, 2022, through
18 the date that the Court grants approval of the settlement.

19 3. "Agreement" or "Settlement" means this Joint Stipulation of Settlement and
20 Release.

21 4. "Plaintiff's Counsel" means Scott Ernest Wheeler and Justin A. Wheeler of Law
22 Office of Scott Ernest Wheeler and Aubry Wand of The Wand Law Firm, P.C.

23 5. "Complaint" means the operative Representative Action Complaint for Violation
24 of Labor Code Section 2698 et. seq. in this Action.

25 6. "Court" means the Los Angeles County Superior Court of California.

26 7. "Defendant" means Infinity Hospice and Palliative Care Inc.

27 8. "Defense Counsel" or "Counsel for the Defendant" means: Ketul Patel and Steven
28 Gallagher of Fox Rothschild.

1 9. “Effective Date” means the date on which the Superior Court or any Party hereto
2 serves notice of entry of the Superior Court’s order and judgment approving the Settlement.

3 10. “Enhancement Payment” means the amount that the Court authorizes to be paid
4 to Plaintiff, in addition to his Individual Settlement Payment, in recognition of his efforts and
5 risks in assisting with the prosecution of the Action. Subject to the Court granting approval of
6 the Settlement, the Parties agree that Plaintiff shall be paid up to Five Thousand Dollars and Zero
7 Cents (\$5,000.00). The Enhancement Payment will be paid from the Gross Settlement Amount.
8 It is understood by Plaintiff that the Court has final discretion in any Enhancement Payment.

9 11. “Gross Settlement Amount” means the gross amount of One Hundred and
10 Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) to be paid by Defendant as set
11 forth by this Agreement to fully and finally settle, resolve, and conclude this Action as to
12 Released Parties, as providing under this Agreement, without any admission of fault or liability.
13 The Gross Settlement Amount includes all Individual Settlement Payments to Aggrieved
14 Employees, payment to the LWDA, Settlement Administration Costs, Attorneys’ Fees and Costs,
15 and the Enhancement Payment to Plaintiff.

16 12. “Individual Settlement Payment” means the amount payable from the Net PAGA
17 Payment to each Aggrieved Employee.

18 13. “Order and Judgment” means the Court’s Order granting approval of the PAGA
19 Settlement and entering Judgment, in the form substantially similar to that attached to this
20 Agreement as **Exhibit A**.

21 14. “PAGA Penalties Fund” means the balance of the Gross Settlement Amount
22 remaining after deduction of the approved Enhancement Payment to Plaintiff, Attorneys’ Fees
23 and Costs, and Settlement Administration Costs.

24 15. “PAGA Period” means the period of March 1, 2022, through the date that the
25 Court grants approval of the settlement.

26 16. “Parties” means Plaintiff and Defendant, together.

27 17. “Plaintiff” means Mark Howell.

28 18. “Released Claims” means all claims, debts, liabilities, demands, obligations,

guarantees, costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, during the time period of March 1, 2022, through the date that the Court grants approval of the settlement, arising out of the PAGA claim asserted in the operative complaint and/or the LWDA letter based upon the following: 1) failure to provide meal periods; 2) failure to provide rest periods; 3) failure to pay overtime wages, 4) failure to pay minimum wages, 5) failure to timely pay wages; 6) failure to pay all wages due to discharged and quitting employees; 7) failure to furnish accurate itemized wage statements; 8) failure to maintain records; 9) failure to indemnify employees for necessary business expenditures; 10) failure to provide California Supplemental COVID-19 sick leave; and 11) failure to provide notice of employer-related information. This release shall only include a release for PAGA claims under California Labor Code Sections 201-203, 204, 210, 226, 226.2, 226.3, 226.7, 246, 248.1, 248.2, 248.6, 248.7, 510, 512, 558, 1174, 1174.5 1194, 1197, 1198, 2802, and 2810.5.

19. "Released Parties" means Defendant and any and all past and present parents, affiliated companies, subsidiaries, divisions, predecessors, successors, subsidiaries of Defendant, and each of their respective past, present, and future parents, affiliated companies including but not limited to subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, attorneys, representatives, benefit plans sponsored or administered by the Released Parties, and any other persons or entities acting on behalf of or in concert with any of the foregoing.

20. "Settlement Administration Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required for completion of the settlement and by this Agreement, which are estimated at \$2,750.00. Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the PAGA Penalties Fund.

21. "Settlement Administrator" means Phoenix Settlement Administrators.

C. PAYMENT OF CONSIDERATION

1. Settlement Consideration. Defendant shall pay the sum of the Gross Settlement

1 Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement
2 Payments; (2) Attorneys' Fees and Costs; (3) Enhancement Payment; (4) Settlement
3 Administration Costs; and (5) payment to the LWDA. The Parties agree that this is a non-
4 reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to
5 Defendant. Payment shall be made to the Settlement Administrator for disbursement in
6 accordance with the Court's order and judgment approving the PAGA Settlement.

7 2. Escalator Clause. The Gross Settlement Amount was calculated with, and is
8 premised on, Defendant's representation that Aggrieved Employees worked approximately 753
9 compensable workweeks in California during the PAGA Period ("Affected Pay Periods"). If the
10 actual number of compensable workweeks is determined to be more than 753 as represented by
11 Defendant, the Gross Settlement Amount will be increased on a pro rata basis according to the
12 number of additional Compensable Workweeks identified (i.e., all Compensable Workweeks
13 beyond 753). Defendant shall also be responsible for any settlement administration costs of this
14 additional payment, which will not be taken out of the additional payment but will be separately
15 paid for.

16 3. Funding of the Gross Settlement Amount. In exchange for the releases,
17 obligations, and promises set forth in this Agreement (and subject to the terms and conditions
18 contained in this Agreement), Defendant is responsible for paying the Gross Settlement Amount
19 of One Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$125,000) in four (4)
20 installments as follows: 1) payment of Thirty-Seven Thousand and Five Hundred Dollars by
21 September 1, 2024, 2) payment of Thirty-Seven Thousand and Five Hundred Dollars by
22 December 31, 2024, 3) payment of Twenty-Five Thousand Dollars by December 31, 2025, and
23 4) payment of payment of Twenty-Five Thousand Dollars by December 31, 2025. Payments
24 shall be wired transferred to the Settlement Administrator by the installment dates as referenced
25 above. All interest that is earned shall be allocated to the PAGA Penalties Fund. The Parties agree
26 to cooperate with the Settlement Administrator and one another to the extent reasonably
27 necessary to carry out the provisions of this Section.

28 4. Allocation of the PAGA Penalties Fund. The PAGA Penalties Fund shall be used

1 to satisfy Individual Settlement Payments to Aggrieved Employees and payment to the LWDA
2 in accordance with the terms of this Agreement. The PAGA Penalties Fund is the maximum
3 amount that will be available for distribution to the LWDA and Aggrieved Employees in full
4 satisfaction of all Released Claims. Pursuant to PAGA, seventy-five percent (75%) of the PAGA
5 Penalties Fund will be paid to the LWDA, and the remaining twenty-five percent (25%), will be
6 paid to all Aggrieved Employees ("Net PAGA Payment").

7 5. Calculation of Individual Settlement Payment. The Settlement Administrator
8 shall calculate the Individual Settlement Payments by dividing the Net PAGA Payment by the
9 total number of Affected Pay Periods. That value will then be multiplied by the number of pay
10 periods worked by each respective Aggrieved Employee during the PAGA Period. Aggrieved
11 Employees are entitled to 100% of the Net PAGA Payment.

12 6. Tax Treatment of Individual Settlement Payment. All Individual Settlement
13 Payments shall be allocated as 100% as penalties. The amount of payments shall be reported on
14 an IRS Form 1099 (to the extent required by law) by the Settlement Administrator and shall not
15 be subject to local, state or federal tax withholdings.

16 7. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as
17 referenced herein will not be utilized to calculate any additional benefits under any benefit plans
18 to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing
19 plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO
20 plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
21 Agreement will not affect any rights, contributions, or amounts to which any Aggrieved
22 Employee may be entitled under any benefit plans.

23 8. Enhancement Payment. Defendant agrees not to oppose or impede any
24 application or motion by Plaintiff for an Enhancement Payment of up to Five Thousand Dollars
25 (\$5,000) to Plaintiff. The Enhancement Payment shall be paid from the Gross Settlement Amount
26 and shall be paid in addition to Plaintiff's Individual Settlement Payment as an Aggrieved
27 Employee. It is understood by Plaintiff that the Court has final discretion in any Enhancement
28 Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff reflecting the

Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to the PAGA Penalties Fund and shall be distributed to Aggrieved Employees as provided in this Agreement.

8. Attorneys' Fees and Costs. In full satisfaction of all claims Plaintiff may have for attorneys' fees, litigation costs, and expenses arising out of the Action, Defendant agree that Plaintiff's Counsel may apply to the Court for an amount of reasonable attorneys' fees not to exceed Forty-Two Thousand Dollars (\$42,000) and will request actual costs, up to a maximum of Twelve Thousand Dollars (\$12,000) ("Attorneys' Fees and Costs"), pursuant to PAGA, which provides for the recovery of attorneys' fees and costs, which shall be paid from the Gross Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel reflecting the awarded attorneys' fees, costs, and expenses. The Parties understand that the Court makes the final determination on the award of Attorneys' Fees and Costs, and that any portion of these amounts not awarded as Attorneys' Fees and Costs shall be added to the PAGA Penalties Fund and distributed to Aggrieved Employees and LWDA as provided in this Agreement.

9. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Gross Settlement Amount, currently estimated at \$2,750. These costs, which shall be paid from the Gross Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the issuance of Form 1099 IRS forms, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the PAGA Penalties Fund and shall be distributed to Aggrieved Employees and the LWDA as provided in this Agreement.

D. ADMINISTRATION OF SETTLEMENT

1. Approval of PAGA Settlement. Plaintiff's Counsel shall request the entry of an order granting approval of the Settlement, which shall include findings and orders: (i) approving

1 the Settlement, (ii) adjudging the terms to be fair, reasonable, and adequate and binding on the
2 State of California, (iii) reciting the release terms, (iv) directing that the Settlement's terms and
3 provisions be carried out; (v) entering final judgment in accordance with this Agreement and
4 without further fees or costs to any party except as expressly set forth in this Agreement; and (vi)
5 retaining jurisdiction to oversee administration and enforcement of the terms of this Agreement
6 and the Court's orders. Plaintiff's motion shall be unopposed by Defendant, unless Plaintiff's
7 approval motion seeks relief inconsistent with or not specified by this Agreement. In such event,
8 Defendant reserves the right to address any assertions that are not contained in this Agreement.

9 2. Settlement Administration. The Parties agree to cooperate in the administration
10 of the Settlement and to make all reasonable efforts to control and minimize the costs and
11 expenses incurred in the administration of the Settlement. The Settlement Administrator shall
12 provide the following services:

- 13 a. Calculate the Individual Settlement Payment to be paid to each Aggrieved
14 Employee in accordance with the terms and provisions of this Agreement;
- 15 b. Print and issue Individual Settlement Payment checks;
- 16 c. Verify the last known address for each Aggrieved Employee through a
17 generally utilized, national address update database prior to mailing the
18 Individual Settlement Payment check;
- 19 d. Disburse any awards of costs and attorneys' fees;
- 20 e. Prepare and issue 1099 Forms; and
- 21 f. Perform such other tasks necessary to effectuate the terms of this
22 Agreement or as the Parties mutually agree or the Court orders the Parties
23 to perform.

24 3. Delivery of the Aggrieved Employee List and Data. Within Thirty (30) calendar
25 days after the Effective Date, Defendant shall provide the Settlement Administrator with a
26 Microsoft Office Excel spreadsheet and shall include each Aggrieved Employee's: full name;
27 employee number; most recent mailing address; social security number; and the number of
28 Affected Pay Periods worked by the employee during the PAGA Period.

1 4. Timing of Distribution. The Settlement Administrator will make two (2)
2 distributions based upon the installment payments made by Defendant. The first distribution
3 shall occur within ten (10) calendar days after the payment of the first and second installment
4 payments of the entire Gross Settlement Amount, the Settlement Administrator will issue
5 payments to: (a) Aggrieved Employees; (b) Plaintiff's Enhancement Award, and (c) Plaintiff's
6 counsels attorney's fees and costs. The second distribution shall occur within ten (10) days after
7 receipt of the third and fourth installment payments, and the Settlement Administrator will issue
8 payments to: (a) the California Workforce Development Agency; and (b) Settlement
9 Administrator. The Settlement Administrator will issue the appropriate tax forms for all
10 payments issued under this Settlement.

11 5. Mailing of Individual Settlement Payments to Aggrieved Employees:

12 a. On the Payment Date, the Settlement Administrator will mail to each
13 Aggrieved Employee, via first-class United States Mail, the following: (a) the PAGA Settlement
14 Notice in English and Spanish, attached as **Exhibit B**; and (b) their Individual PAGA Payment
15 (collectively, the "PAGA Packet").

16 b. Prior to mailing, the Settlement Administrator will update all addresses
17 using the National Change of Address System (NCOA). In the event that a PAGA Packet is
18 returned to the Settlement Administrator with a forwarding address, the Settlement Administrator
19 will re-send the PAGA Packet to the forwarding address identified. If no forwarding address is
20 provided, then the Settlement Administrator will promptly conduct a "standard search,"
21 sometimes called, "Skip Trace" or "Credit Header" searches, to locate a better address. If a better
22 address is found, the Settlement Administrator will promptly re-send the PAGA Packet. If a
23 better address is not found or the PAGA Packet is ultimately returned without a forwarding
24 address, neither the Settlement Administrator, Defendant, or PAGA Counsel shall be required to
25 take further action.

26 c. Aggrieved Employees shall have 180 calendar days after the date the
27 PAGA Packet is mailed to them to cash their settlement payment checks. If any Aggrieved
28 Employee's check is not cashed within that period, the settlement payment check will be voided

1 and a stop-payment will be issued. Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA
2 Counsel will have any liability for lost or stolen settlement payment checks, forged signatures on
3 settlement payment checks, unauthorized negotiation of settlement payment checks or failure to
4 timely cash a settlement payment check within the 180-day period.

5 d. Any unpaid cash residue or unclaimed Aggrieved Employee funds, plus
6 any accrued interest that has not otherwise been distributed pursuant to order of the Court, shall
7 be transmitted to the State of California Controller's Office.

8 **E. RELEASE OF CLAIMS**

9 6. Release of Claims by Aggrieved Employees. Upon the payment of the Gross
10 Settlement Amount by Defendant, Plaintiff and all Aggrieved Employees, hereby do and shall
11 be deemed to have fully and finally released and discharged the Released Parties from all
12 Released Claims that that arose during the time period of March 1, 2022, through the date that
13 the Court grants approval of the settlement, arising out of the PAGA claim asserted in the
14 operative complaint and/or the LWDA letters, including any related claims for attorneys' fees,
15 costs, or interest resulting therefrom. It is understood and agreed that this Agreement neither
16 releases the Released Parties from liability, if any, to Aggrieved Employees for violations of any
17 predicate statutes other than PAGA, nor effects a waiver of claims by Aggrieved Employees
18 against the Released Parties for any individual wage and hour claims.

19 7. No Right to Opt-Out. The Parties agree there is no statutory right for any
20 Aggrieved Employee to opt out or otherwise exclude himself or herself from the Settlement.

21 8. General Release and Waiver of Claims by Plaintiff. Plaintiff (on behalf of himself
22 and his spouse, heirs, executors, administrators, trustees, and/or permitted assigns) also agrees to
23 a general release of any and all claims against Releasees—which shall include without limitation
24 any and all claims which in any way relate to his employment with Defendant or cessation
25 thereof, under State or Federal law, in tort, common law, statute, contract, or equity, whether
26 pled in the Complaint or not, including but not limited to any claims under the FLSA, Title VII,
27 ADA, FEHA, ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission
28 Wage Order—now existing or arising in the future, based on any act, omission, event,

1 occurrence, or nonoccurrence from the beginning of time to the date of execution hereof. Plaintiff
2 further expressly waives and relinquishes, to the fullest extent permitted by law, the provisions,
3 rights and benefits of Section 1542 of the California Civil Code, which provides: “**A general**
4 **release does not extend to claims that the creditor or releasing party does not know or**
5 **suspect to exist in his or her favor at the time of executing the release and that, if known by**
6 **him or her, would have materially affected his or her settlement with the debtor or released**
7 **party.**” Notwithstanding the provisions of section 1542, and for the purpose of implementing a
8 full and complete release and discharge of all of their Released Claims, Plaintiff expressly
9 acknowledges that this Settlement is intended to include in its effect, without limitation, all
10 Released Claims which Plaintiff does not know or suspects to exist in his favor at the time of
11 execution hereof, and that the Settlement contemplates the extinguishment of all such Released
12 Claims. This excludes Plaintiff’s individual wrongful termination and retaliation causes of action
13 pursuant to Labor Code Section 1102.5, which the Parties have agreed to settle for \$10,000.00
14 which will be set forth in a separate individual settlement agreement.

15 9. No Additional Attorneys’ Fees or Costs. The Parties agree to bear their own
16 attorneys’ fees and costs related to this Action except as specifically provided in this Agreement
17 with respect to Attorneys’ Fees and Cost.

18 **F. MISCELLANEOUS**

19 1. Tax Liability. Defendant, Defendant’s counsel, the Settlement Administrator, and
20 Plaintiff’s Counsel make no representation as to the tax treatment or legal effect of the payments
21 called for hereunder, and Plaintiff and Aggrieved Employees are not relying on any statement,
22 representation, or calculation by Defendant, Defendant’s counsel, Plaintiff’s Counsel, or by the
23 Settlement Administrator in this regard. Plaintiff and Aggrieved Employees understand and agree
24 that they will be solely responsible for the payment of any and all taxes and penalties assessed
25 on their respective payments described herein and will defend, indemnify, and hold Defendant,
26 Defendant’s counsel, Plaintiff’s Counsel and the Settlement Administrator free and harmless
27 from and against any claims resulting from treatment of such payments as non-taxable
28 penalties/damages.

2. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

3. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged. None of the rights,

1 commitments, or obligations recognized under this Agreement may be assigned by any Party,
2 Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party.
3 Plaintiff expressly warrants that Plaintiff has not transferred to any person or entity any right or
4 cause of action, or claim released by this Agreement.

5 4. Nullification of Settlement Agreement. In the event that: (i) the Court does not
6 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any
7 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
8 will be null and void, and the Parties will be returned to their original respective positions.

9 5. Continued Jurisdiction. After entry of the judgment, the Court will have
10 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
11 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court
12 Approval matters as may be appropriate under court rules or as set forth in this Settlement.

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

16 7. Amendment or Modification. This Settlement Agreement may be amended or
17 modified only by a written instrument, signed by either the Parties or their successors-in-interest
18 or counsel for all Parties.

19 8. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
20 and represent they are expressly authorized by the Parties whom they represent to negotiate this
21 Agreement and to take all appropriate action required or permitted to be taken by such Parties
22 pursuant to this Agreement to effectuate its terms and to execute any other documents required
23 to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
24 other and use their best efforts to effect the implementation of the Settlement. If the Parties are
25 unable to reach agreement on the form or content of any document needed to implement the
26 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
27 of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

28 9. 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.

10. California Law Governs. All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California.

11. Execution and Counterparts. This Agreement is subject only to the execution of all Parties. However, the Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile 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.

12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations. 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.

13. Invalidity of Any Provision. Before declaring any provision of this 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 Agreement valid and enforceable. If any provision of this Agreement is or becomes invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions contained herein shall not be affected.

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

15. Waiver. No waiver of any condition or covenant contained in this 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.

16. 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

1 this Settlement or to declare rights and/or obligations under this Settlement, the successful Party
2 or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
3 fees and costs, including expert witness fees incurred in connection with any enforcement
4 actions.

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

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

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

19 20. Denial of Liability. The Parties expressly recognize that the making of this
20 Agreement does not in any way constitute an admission or concession of wrongdoing on the part
21 of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor
22 any statements, discussions or communications, nor any materials prepared, exchanged, issued
23 or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing
24 constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral,
25 administrative, investigative or other forum or proceeding, as evidence of any violation of any
26 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any
27 obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be
28 used in any proceeding in the Court 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, including, without limitation, by Defendant should any party seek relief against any of the Released Parties on any Released Claims.

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

DATE: 4/13/2024

PLAINTIFF MARK HOWELL

By:

Plaintiff Mark Howell

DocuSigned by:

Mark Howell

4886CB060810413...

DATE: 04/10/24

DEFENDANT INFINITY HOSPICE AND
PALLIATIVE CARE INC.

DocuSigned by:

David Wittenberg

A880B193B0824F4...

By: David Wittenberg, authorized signatory

APPROVED AS TO FORM ONLY:

DATE: 4/16/24

LAW OFFICE OF SCOTT ERNEST WHEELER

By:

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

THE WAND LAW FIRM, P.C.
AUBRY WAND

*Attorneys for Plaintiff and the other Aggrieved
Employees*

FOX ROTHCHILD

DATE: 04/10/24

By:

DocuSigned by:

Steven Gallagher

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KEIUL D. PATEL
STEVEN GALLAGHER

*Attorney for Defendant, Infinity Hospice and
Palliative Care Inc.*