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9 Evergreen at Oroville, LLC, 1000 Executive Parkway, LLC, Evergreen at Arvin, LLC,
10 Evergreen at Bakersfield, LLC, Evergreen at Lakeport, LLC, Evergreen at Heartwood
11 Avenue, LLC, Evergreen at Spring Road, LLC, Evergreen at Tracy, LLC, Evergreen at
12 Petaluma, LLC Evergreen at Salinas, LLC, and Evergreen at Fullerton, LLC

13 **JAMS ARBITRATION**

14 Waldman, Sharon, et al,

Ref No: 1100088580

15 Claimants,

**STIPULATION OF SETTLEMENT AND
GENERAL RELEASE**

16 v.

17 EmpRes Health Management, LLC, et al.,

18 Respondents.

19 **I.**

20 **INTRODUCTION**

21 This Class Action Settlement and Release Agreement (“Settlement” or “Agreement”)
22 is entered into between Claimants Sharon Waldman, David Rauch and Theresa Mascolina,
23 individually and on behalf of all other similarly situated employees (“Claimants”), on the one
24 hand, and Respondents Evergreen at Chico, LLC, Evergreen at Oroville, LLC/1000 Executive
25 Parkway, LLC, Evergreen at Arvin, LLC, Evergreen at Bakersfield, LLC, Evergreen at
26 Lakeport, LLC, Evergreen at Heartwood Avenue, LLC, Evergreen at Spring Road, LLC,
27 Evergreen at Tracy, LLC, Evergreen at Petaluma, LLC Evergreen at Salinas, LLC, Evergreen
28 at Fullerton, LLC, and EmpRes Healthcare Management, LLC (“Respondents”), on the other
hand, with respect to all claims asserted on behalf of Claimants in Claimants’ Demand for
Arbitration filed with JAMS and served on Respondents’ counsel November 14, 2017. This
Agreement is intended to fully, finally and forever resolve and settle the Released Claims, as

1 defined below, upon and subject to the terms and conditions of this Agreement. This
2 Agreement shall become effective upon the “Effective Date of Settlement” as defined below.

3 **II.**

4 **DEFINITIONS**

5 1. “Action” or “Legal Dispute” means the wage claims asserted on behalf of Class
6 Representatives (defined below) and Claimants against Respondents (defined below) which
7 are outlined in Claimants’ Demand for Arbitration filed with JAMS and served on
8 Respondents’ counsel November 14, 2017.

9 2. “Agreement” means this Class Action Settlement and Release Agreement.

10 3. “Arbitrator” refers to the Honorable Robert Freedman (ret.) of JAMS.

11 4. “Claims Administrator” refers to Phoenix Settlement Administrators, who shall
12 perform the customary duties of a class action settlement administrator including, but not
13 limited to, the duties enumerated in this Agreement.

14 5. “Claims Administrator Costs” or “Claims Administration Costs” are defined as
15 the costs, fees, charges, and expenses reasonably and necessarily incurred by the Claims
16 Administrator for administration of the class action settlement administration.

17 6. “Class” or “Class Member” are defined as follows:

18 All persons in California who while an employee of a Respondent performed work as
19 hourly, non-exempt registered nurses, licensed vocational nurses, certified nursing
20 assistants, restorative nursing aides, physical, occupational and speech therapists,
21 therapy assistants, and/or therapy aides at any time during the period from November
22 1, 2013 through Preliminary Approval. Excluded from this Class are Class Counsel and
23 the Arbitrator who has been assigned to this case.

24 7. “Class Counsel” shall refer to Robert S. Arns and attorneys of The Arns Law
25 Firm and Kathryn A. Stebner and attorneys of Stebner and Associates.

26 8. “Class Period” shall mean the period commencing on November 1, 2013
27 through the date of Preliminary Approval (defined below).

28 9. “Class Representatives” shall individually refer to Claimants Sharon Waldman,
David Rauch and Theresa Mascolina.

1 10. “Compensable Work Day” shall mean each day a Class Member worked in a
2 Respondent’s facility in California during the Class Period and was not on leave of absence.

3 11. “Effective Date of Settlement” is defined as the day after the expiration of ten
4 (10) days after an order finally approving the Agreement is rendered and not subject to appeal
5 or to any attempt to re-open the judgment or to request to extend the time to seek an appeal;
6 or, if an appeal has been sought, the expiration of ten (10) days after the final disposition of
7 any such appeal and any further proceedings of the Arbitrator (and, following any such
8 proceedings, the expiration of all time to notice an appeal or, if an appeal has been sought, the
9 expiration of ten (10) days after the final disposition of any such appeal), which disposition
10 approves the Arbitrator’s order finally approving the Agreement.

11 12. “Enhancement Payments” shall mean the amount approved by the Arbitrator to
12 be paid to each Class Representatives in addition to their Individual Settlement Payment for
13 their effort in coming forth as Class Representatives and obtaining settlement on behalf of the
14 Class.

15 13. “Exclusion Request” or “Request for Exclusion” refers to a timely and valid
16 written request to opt-out or exclude oneself from the Settlement sent by any Class Member to
17 the Claims Administrator. A Class Member must submit a Request for Exclusion to exclude
18 himself or herself from the Settlement and from the release of claims pursuant to the
19 Settlement, Notice, or Arbitrator’s Order preliminarily approving the Settlement.

20 14. “Fairness Hearing” or “Final Approval Hearing” shall mean the hearing of the
21 Motion for Final Approval of the Class Action Settlement.

22 15. “Gross Settlement Amount” shall mean One Million Nine Hundred Thousand
23 Dollars and No Cents (\$1,900,000.00) as the amount that will be paid by Respondents pursuant
24 to the terms of this Agreement.

25 16. “Individual Settlement Payment” is the payment that each Participating Class
26 Member (defined below) will receive under the terms of this Agreement and shall be calculated
27 based upon the total days worked by each Participating Class Member during the Class Period.
28 The number of days worked will then be adjusted to an “Adjusted Work Days” by applying a

1 multiplier, as described in section V.C., below. Each individual Class Member’s share of the
2 Net Settlement Amount will be calculated by dividing his or her Adjusted Work Days by the
3 total number of Adjusted Work Days of all Class Members during the Class Period.

4 17. “Information Form” refers to **Exhibit 2**, the form approved by the Settling
5 Parties (defined below) and subject to Arbitrator approval, which the Claims Administrator
6 will mail to each Class Member (defined below).

7 18. “Net Settlement Amount” shall mean the Gross Settlement Amount minus the
8 amounts allocated and approved by the Arbitrator for Class Representatives’ Enhanced
9 Payments, Class Counsel’s attorneys’ fees and costs, the payment to the Labor and Workforce
10 Development Agency (“LWDA”), the Claims Administrator’s Costs, and the employer’s
11 portion of FICA, FUTA and all other state and federal payroll taxes.

12 19. “Notice” shall mean the Notice of Class Action Settlement (substantially in the
13 form attached hereto as **Exhibit 1**) approved by the Settling Parties (defined below) and subject
14 to Arbitrator modification and approval, which the Claims Administrator will mail to each
15 Class Member explaining the terms of the Settlement contemplated by this Agreement and the
16 notice process.

17 20. “Participating Class Members” shall mean all Class Members who do not opt
18 out of the Settlement by sending a timely and valid Request for Exclusion (discussed further
19 below).

20 21. “Preliminary Approval” shall mean the date the Arbitrator enters an Order
21 granting preliminary approval of this Agreement.

22 22. “Released Claims” shall mean any and all claims, causes of action, damages,
23 wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys’ fees,
24 costs, and any other form of relief or remedy in law, equity, or whatever kind of nature, arising
25 from the claims identified in the Demand for Arbitration or reasonably related to those claims,
26 including, without limitation, all claims for failure to accurately calculate and pay overtime
27 compensation, failure to pay for all hours worked, failure to provide meal periods, failure to
28 provide rest periods, failure to provide proper itemized wage statements, failure to keep

1 accurate records, failure to pay or properly pay for hours worked off the clock, failure to pay
2 wages upon termination of employment, waiting time penalties, requiring unlawful releases,
3 violations of the IWC Wage Orders, and violation of California Labor Code §§ 203, 204,
4 206.5, 210, 216, 226, 226.7, 510, 512, 558; 1174, 1174.5, 1194, 1197, 1197.1, 1198 and 2699
5 *et seq.*; the California Unfair Competition Act, and in particular, California Bus. & Prof. Code
6 §§ 17200 *et seq.*; the Private Attorney General Act; California Code of Civil Procedure §
7 1021.5; and any other provision of the California Labor Code or any applicable California
8 Industrial Welfare Commission Wage Orders, in all of their iterations.

9 23. “Released Parties” shall mean Respondents and all of their former and present
10 parents, subsidiaries, and affiliates, and its current and former owners, officers, directors,
11 employees, consultants, managers, partners, insurers, members, shareholders and agents, and
12 their predecessors and successors, assigns, and legal representatives of all such entities and
13 individuals.

14 24. “Respondents’ Counsel” shall refer to Laura Sitar of Pleiss Sitar McGrath
15 Hunter & Hallack.

16 25. “Respondents” shall mean Evergreen at Chico, LLC, Evergreen at Oroville,
17 LLC/1000 Executive Parkway, LLC, Evergreen at Arvin, LLC, Evergreen at Bakersfield, LLC,
18 Evergreen at Lakeport, LLC, Evergreen at Heartwood Avenue, LLC, Evergreen at Spring
19 Road, LLC, Evergreen at Tracy, LLC, Evergreen at Petaluma, LLC Evergreen at Salinas, LLC,
20 Evergreen at Fullerton, LLC, and EmpRes Healthcare Management, LLC.

21 26. “Settling Parties” shall collectively refer to Claimants and Respondents.

22 **III.**

23 **FACTUAL AND PROCEDURAL BACKGROUND**

24 **A. Claimants’ Contentions**

25 Claimants and their counsel believe this putative class action is meritorious based on
26 the alleged violations of California’s wage and hour and unfair competition laws by
27 Respondents and is appropriate for class action treatment pursuant to California Code of Civil
28 Procedure § 382; however, Claimants and their counsel recognize that litigation is uncertain,

1 and believe that the present Settlement is in the best interest of the Class Members.

2 **B. Respondents' Contentions**

3 Respondents deny any liability or wrongdoing of any kind associated with the claims
4 alleged in the action, and contend that, for purposes other than settlement, this Action is not
5 appropriate for class action treatment pursuant to California Code of Civil Procedure § 382.
6 Respondents further contend that they have complied with the California Labor Code,
7 California Business and Professions Code, and all applicable Wage Orders of the California
8 Industrial Welfare Commission. Respondents contend they paid their employees all wages
9 due and have fully complied with all California laws and regulations; however, Respondents
10 also agree that because litigation is uncertain, settlement is in the best interests of all the parties
11 in this Action.

12 **C. Settlement Reached After Mediation**

13 1. After ongoing informal talks over a number of months and an exhaustive
14 mediation conducted on October 31, 2017 by retired judge, Honorable Robert Freedman
15 (retired), in San Francisco, California, this Settlement was reached after arms-length
16 negotiations by and among the Settling Parties.

17 2. Claimants' filed and served a formal Demand for Arbitration on JAMS and
18 Respondents' counsel on November 14, 2017 memorializing all claims which were subject to
19 mediation.

20 3. The Settling Parties agree that this Settlement reflects their good faith
21 compromise of the claims raised in this Action, based upon their assessment of the mutual risks
22 and costs of further litigation and assessments of their respective counsel.

23 4. The Settling Parties further agree that the Settlement is fair and reasonable and
24 will so represent to the Arbitrator.

25 **D. Adequate Investigation and Fair and Reasonable Settlement**

26 Class Counsel has conducted a thorough investigation into the facts of this Action,
27 including an exhaustive review of directly relevant public documents and multiple lengthy
28 interviews with Class Representatives and others. Based on their own independent

1 investigation and evaluation, the Class Representatives and Class Counsel have determined
2 that this Settlement with Respondents for the consideration, and on the terms set forth in this
3 Agreement, is fair, reasonable, and adequate, and is in the best interests of the Class Members
4 in light of all known facts and circumstances, including the risk of significant delay, the risk
5 the class will not be certified by the Arbitrator, the rebuttal asserted by Respondents and the
6 potential appellate issues.

7 **IV.**

8 **NO ADMISSION**

9 1. Nothing contained in this Agreement or in the settlement entered into at the
10 mediation shall be construed or deemed an admission of liability, culpability, negligence, or
11 wrongdoing, on the part of Respondents and their former and present parents, subsidiaries and
12 affiliated corporations and entities, and all of their current and former officers, directors,
13 current and former owners, trustees, members, managers, employees, consultants, partners,
14 insurers, shareholders, joint venturers, agents, successors, assigns and/or legal representatives.
15 Nor shall anything in this Agreement or in the settlement entered into at the mediation be
16 construed or deemed an admission that this Action was or was not properly brought as a class
17 action or a representative action under California Code of Civil Procedure § 382, Business and
18 Professions Code § 17200, or the Private Attorneys General Act. Each of the Settling Parties
19 has entered into this Settlement with the intention to avoid further disputes and litigation with
20 the attendant inconvenience and expenses.

21 2. Settlement of the Action, the negotiation and execution of this Agreement, and
22 all acts performed or documents executed pursuant to or in furtherance of this Agreement or
23 in connection with the Settlement are not, shall not be deemed to be, and may not be used as,
24 an admission or evidence of any wrongdoing or liability on the part of Respondents or its
25 former and present parents, subsidiaries or affiliated corporations or entities, or their current
26 or former officers, directors, current or former owners, trustees, members, managers,
27 employees, consultants, partners, insurers, shareholders, joint venturers, agents, successors,
28 assigns or legal representatives, or of the truth of any of the factual allegations in the presented,

1 or the lack thereof. This Agreement constitutes the settlement document and shall be
2 inadmissible in evidence in any proceeding, except an action or proceeding to approve,
3 interpret, or enforce the terms of the Agreement.

4 V.

5 **TERMS OF THE SETTLEMENT**

6 **A. Gross Settlement Amount**

7 The claims of all the Class Members are settled for the Gross Settlement Amount of
8 One Million Nine Hundred Thousand Dollars and No Cents (\$1,900,000.00) by Respondents.
9 This Gross Settlement Amount is inclusive of attorneys' fees, costs and expenses directly or
10 indirectly related to resolution of the dispute (which includes all such fees, costs and expenses
11 incurred to date, as well as all such fees, costs and expenses incurred in documenting the
12 settlement, securing approval of the settlement, administering and obtaining a judgment from
13 the Arbitrator), Claims Administration Costs, the payment to the LWDA for claims under
14 Private Attorneys' General Act of 2004, Cal. Labor Code §§ 2699 et seq. ("PAGA"), the
15 Enhancement Payments to the Class Representatives and the employer's portion of FICA,
16 FUTA, and all other state and federal payroll taxes. If there is any reduction in attorneys' fees,
17 costs, Enhancement Payments, Claims Administrator Costs, and/or PAGA payment, then the
18 funds will be distributed to the Net Settlement Amount. There will be no reversion to
19 Respondents.

20 **B. Net Settlement Amount**

21 The Net Settlement Amount shall be the Gross Settlement Amount, minus the
22 following subject to approval by the Arbitrator: (1) the award of attorneys' fees and costs to
23 Class Counsel; (2) the Enhancement Payments to the Class Representatives; (3) Claims
24 Administrator Costs; (4) PAGA payment to the State of California LWDA; and (5) the
25 employer's portion of FICA, FUTA, and all other state and federal payroll taxes.

26 **C. Payments to Class Members by Respondents**

27 Participating Class Members will be paid from the Net Settlement Amount. All Class
28 Members are classified in Respondents' records by their position as either an hourly, non-

1 exempt registered nurse (“RN”), licensed vocational nurse (“LVN”), certified nursing assistant
2 (“CNA”), restorative nursing aide (“RNA”) physical, occupational or speech therapist
3 (“POST”), therapy assistant or therapy aide (“TA”). Each Participating Class Member’s share
4 of the Net Settlement Amount will be calculated by adding the number of days he or she
5 worked for Respondents in a non-exempt position in California during the Class Period. The
6 number of days worked will then be adjusted by a multiplier, based on the variance in each
7 position’s average wages, to calculate the “Adjusted Work Days.” Each individual Class
8 Member’s share of the Net Settlement Amount will be calculated by dividing his or her
9 Adjusted Work Days by the total number of Adjusted Work Days of all Class Members during
10 the Covered Period. Days worked by a Class Members seeking exclusion shall not be counted.
11 The Claims Administrator shall calculate the amount to be paid to each Claimant.

12 **D. Claims Administrator**

13 The Settling Parties have negotiated and selected Phoenix Settlement Administrators
14 to be the Class Administrator, who shall follow all the Settling Parties’ instructions which are
15 not in express contravention to the Agreement as preliminarily approved by the Arbitrator.

16 **E. The Class Members’ Release of Claims**

17 Upon the Effective Date, the Class Members who do not exclude themselves from the
18 Settlement will release and discharge the Released Parties from all Released Claims, as defined
19 in Section II, above.

20 **F. Class Representatives’ General Release**

21 1. In consideration of the mutual covenants, promises, and representations set
22 forth in this Settlement, Class Representatives, on behalf of themselves and on behalf of their
23 current, former, and future heirs, spouses, children, offspring, executors, trustees,
24 administrators, attorneys, agents, personal and legal representatives, successors, and assigns,
25 does hereby and forever releases the Released Parties from all claims, demands, rights,
26 liabilities and causes of action of every nature and description whatsoever, known or unknown,
27 asserted or that might have been asserted based on the allegations in the complaint.
28

1 2. The Class Representatives acknowledge that they are releasing both known and
2 unknown and suspected and unsuspected claims and causes of action arising from the facts
3 alleged in this Action.

4 3. The Class Representatives further agree that no third party, including but not
5 limited to any private attorney general, including but not limited to PAGA, or any Business &
6 Professions Code § 17200 Claimants, shall bring any claim released herein on his or her behalf.

7 4. The Class Representatives further covenant and agree that (a) they will not sue
8 or bring any action or cause of action, including by way of third-party claim, cross-claim, or
9 counterclaim, against any of the Released Parties with respect to any of the Class
10 Representatives' released claims; (b) they will not initiate or participate in bringing or pursuing
11 any class action against any of the Released Parties with respect to any of the Class
12 Representative's released claims; (c) if involuntarily included in any such class action, the
13 Class Representative will use their best efforts to withdraw therefrom; and (d) they will not
14 assist any third party in initiating or pursuing a class action suit with respect to any of the Class
15 Representatives' released claims. Nothing herein shall preclude the Class Representative from
16 complying with a lawful order by an Arbitrator with jurisdiction or responding to a duly issued
17 subpoena.

18 5. The Class Representatives make this waiver with full knowledge of their rights
19 and with the specific intent to waive known and unknown claims arising on or before the day
20 of the final approval of the Settlement, and therefore specifically waive the provisions of any
21 statute, rule, decision or other source of law of the United States or of any state of the United
22 States or any subdivision of a state which prevents release of unknown claims.

23 **G. Attorneys' Fees and Costs**

24 1. The Action alleges a potential claim for attorneys' fees and costs pursuant to,
25 inter alia, the California Labor Code and the Code of Civil Procedure. The Settling Parties
26 agree that any and all such claims for attorneys' fees and costs have been settled in this
27 Agreement subject only to approval by the Arbitrator.

28

1 2. Claimants will request that Class Counsel be awarded attorneys' fees and actual
2 costs in an amount not to exceed 33.3% of the Gross Settlement Amount (\$632,700.00). This
3 amount shall be included in the Gross Settlement Amount and deducted therefrom. A Form
4 1099 will be issued to Class Counsel with respect to their awarded attorneys' fees and actual
5 costs.

6 3. If the Arbitrator awards Class Counsel with attorneys' fees and costs that are
7 less than the amount requested, that difference shall be allocated to the Net Settlement Amount
8 and distributed to the Participating Class Members.

9 4. Neither Claimants nor Class Counsel, nor any other Class Member, shall seek
10 payment of attorneys' fees or reimbursement of costs or expenses from Respondents except as
11 expressly set forth in this Agreement. In other words, by entering into this Agreement, the
12 Settling Parties waive any and all claims for fees, costs, indemnity or contribution, against any
13 Participating Class Member, Respondents or its counsel, or against Claimants and Class
14 Counsel arising from this Action. In consideration of their awarded attorneys' fees and
15 expenses, Class Counsel waives any and all claims to any further attorneys' fees and expenses
16 in connection with the Action.

17 5. Attorneys' fees and actual costs awarded by the Arbitrator shall be payable from
18 the Gross Settlement Fund after the Second Settlement Distribution, but on or before
19 November 15, 2019 presuming an order awarding final approval of the settlement has been
20 made by the arbitrator, notwithstanding the existence of any timely filed objections thereto, or
21 potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject
22 to Class Counsel's obligation to make appropriate refunds or repayments to the Settlement
23 Fund plus accrued interest at the same net rate as is earned by the Settlement Fund, if and
24 when, as a result of any appeal or further proceedings on remand, or successful collateral
25 attack, the fee or cost award is reduced or reversed.

26 **H. Enhancement Payment to Class Representatives**

27 1. Class Counsel will request, and Respondents and its counsel will not oppose,
28 payment to the Class Representatives, Sharon Waldman, David Rauch and Theresa Mascolina,

1 in the amount not to exceed Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00)
2 each in addition to whatever pro rata portion of the Net Settlement Amount he or she is
3 otherwise entitled to receive as a Participating Class Member. A Form 1099 will be issued
4 with respect to his or her awarded Enhancement Payment.

5 2. If the Arbitrator awards Class Representative an enhancement that is less than
6 the amount requested, the difference shall be allocated to the Net Settlement Amount.

7 **I. PAGA**

8 The Settling Parties agree that Twenty Thousand Dollars and No Cents (\$20,000.00)
9 of the Gross Settlement Amount will be allocated to settle the PAGA claim, and will be
10 distributed as follows: 75 percent of the apportioned PAGA settlement amount (\$15,000.00)
11 will be paid to the LWDA, and the remaining 25 percent (\$5,000.00) will be divided equally
12 among the Participating Class Members and included in their Individual Settlement Payments
13 on a pro rata share basis (based on number of days worked and position held during the Class
14 period). The State of California Labor and Workforce Development Agency will be notified
15 of this settlement at the time the Motion for Preliminary Approval of Settlement is filed with
16 the Arbitrator.

17 **J. Claims Administration**

18 The Motion for Preliminary Approval shall ask for up to thirty-eight thousand, six-
19 hundred and sixty Dollars (\$38,660.00) from the Gross Settlement Amount for Claims
20 Administrator Costs. Claims Administrator Costs are not anticipated to exceed this amount,
21 however if any of the assumptions, such as class size, change significantly such that additional
22 funds are necessary to undertake administration of the settlement, the Parties will raise the
23 issue with the arbitrator prior to the second distribution of settlement funds to seek approval of
24 payment of additional funds to the Claims Administrator. If the Claims Administrator Costs
25 are less than \$38,660, the difference shall be allocated to the Net Settlement Amount.

26 **K. Distribution to Participating Class Members**

27 1. Respondents agree to compensate the Participating Class Members based on
28 the days worked and position (RN, CNA, etc.) held during the Class Period. The Parties will

1 use Respondents' records to calculate, and the Class Members shall verify through the notice
2 process, the total days worked by each Participating Class Members in California during the
3 Class Period. The number of days worked will be adjusted to an "Adjusted Work Days" by
4 applying a multiplier, as described in section V.C., above. Each individual Class Member's
5 share of the Net Settlement Amount will be calculated by dividing his or her Adjusted Work
6 Days by the total number of Adjusted Work Days of all Class Members during the Class
7 Period. Each Individual Settlement Payment will be calculated by multiplying each individual
8 Class Member's share of the Net Settlement Amount by the multiplier. This resulting amount
9 will be subject to tax withholdings as further specified herein.

10 2. The Claims Administrator shall be responsible for issuing the payments and
11 calculating and withholding all required state and federal taxes, if any, from the Individual
12 Settlement Payments to the Participating Class Members.

13 3. The Parties and their counsel will support each and every provision of this
14 Agreement before the Arbitrator and will work together as necessary to obtain the Arbitrator's
15 approval of its form and content.

16 4. Once the memorialized Agreement and other related documents are approved
17 by the Arbitrator, the payments to each Participating Class Member will be paid in accordance
18 with the provisions set forth in this Agreement.

19 5. The Claims Administrator shall never be empowered to make payments to
20 Participating Class Members exceeding the total Net Settlement Amount or deviate from the
21 payment formula set forth in this agreement unless agreed upon by the Settling Parties.

22 **L. Tax Allocation**

23 The Settling Parties agree that, because the Individual Settlement Payments are for
24 settlement of alleged unpaid wages, interest, and statutory penalties, 50% of the Individual
25 Settlement Payments will be subject to tax withholding and this portion of the payments will
26 be reported on an IRS Form W-2 for wages, and 50% of the Individual Settlement Payments
27 will be for penalties and interest to be paid without withholding and reported on an IRS Form
28 1099. The Claims Administrator will be responsible for issuing any required state and federal

1 reporting documents (such as IRS Forms W-2s and 1099s) to Participating Class Members,
2 Class Counsel, the State of California and the Class Representatives.

3 **VI.**

4 **THE EFFECTIVE DATE OF THE SETTLEMENT**

5 This Agreement shall become effective and deemed final only upon the Effective Date
6 of Settlement. No money will be distributed to Participating Class members until after the
7 Effective Date of Settlement as set forth herein.

8 **VII.**

9 **DEPOSITS AND PAYMENTS**

10 1. Respondents agree to pay the total amount of the payments due to the Class
11 Representatives, Class Counsel, the LDWA, the Claims Administrator, the Participating Class
12 Members, and the employer's portion of state and federal taxes in twenty (20) equal
13 installments of Ninety-Five Thousand Dollars and No Cents (\$95,000) beginning March 1,
14 2018 subject to Preliminary Approval. Payments of Ninety-Five Thousand Dollars and No
15 Cents \$95,000.00 each shall continue to be paid on the first of each month until the final
16 payment is made October 1, 2019. Failure by Respondents to adhere to this payment schedule
17 without prior agreement of Class Counsel will result in an acceleration of the remaining
18 balance, which shall become due immediately upon default by Respondents, in addition to a
19 \$150,000 penalty payment, which shall become part of the Gross Settlement Amount. In the
20 event of default, Class Counsel may request, and Respondents shall not oppose, an entry of
21 judgement against Respondents for the full remaining balance due, including the penalty
22 payment described above.

23 2. The amounts owed to Class Counsel for attorney's fees and actual costs shall
24 be paid upon award, as described in section V.G.5., above. The amounts owed to Class
25 Representatives, the LDWA, the Claims Administrator, and the Participating Class Members,
26 shall be paid by the Claims Administrator pursuant to the following payment schedule:

27 a. The "First Settlement Distribution" shall be sent on or before March 1,
28 2019.

1 b. The “Second Settlement Distribution” shall be made on or before
2 November 1, 2019.

3 c. On May 1, 2018, the Claims Administrator will be authorized to withdraw
4 from the Settlement Fund all unpaid costs associated with Claims Administration
5 incurred to that point, to the extent that the amount does not exceed \$38,660. The
6 Claims Administrator shall provide an accounting to the Parties at least 5 days prior to
7 withdrawal from the Settlement Fund.

8 d. On May 1, 2019, the Claims Administrator will be authorized to
9 withdraw from the Settlement Fund all unpaid costs associated with Claims
10 Administration incurred to that point, to the extent that all Claims Administration costs
11 incurred to date does not exceed \$38,660. The Claims Administrator shall provide an
12 accounting to the Parties at least 5 days prior to withdrawal from the Settlement Fund.

13 e. By November 1, 2019, the Claims Administrator shall have
14 communicated a final accounting of all distributions, anticipated distributions, and
15 anticipated administration expenses to the Parties for approval, including any
16 anticipated remaining costs associated with Claim Administration for which payment
17 to the Claims Administrator is, or will be, due.

18 3. The Settlement Administrator will mail the First Settlement Distribution to all
19 Participating Class Members on the prescribed date. The amount of each check issued at the
20 time of the First Settlement Distribution shall be the Participating Class Member’s pro rata
21 share of the Net Settlement Amount at the time of the distribution, as defined in section II.14.
22 (“Individual Settlement Payment”), above. Participating Class Members must cash Individual
23 Settlement Payments from the First Settlement Distribution within one hundred and twenty
24 (120) calendar days after it is mailed. If a check is returned to the Settlement Administrator,
25 the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating
26 Class Member the corrected address. If the check remains uncashed by the expiration of the
27 120-day period, the Settlement Administrator will keep an accounting of such funds, including
28 the identification of the Participating Class Member. The Settlement Administrator will then

1 return the unclaimed funds to the Net Settlement Amount. In such event, the Participating Class
2 Member will nevertheless remain bound by the Settlement and the releases contained herein.

3 4. The Claims Administrator will mail the Second Settlement Distribution to all
4 Participating Class Members who cashed checks issued at the time of the First Settlement
5 Distribution. The amount of each check issued in the Second Settlement Distribution shall be
6 the Participating Class Member's pro rata share of the remaining funds in the Net Settlement
7 Amount at the time of the distribution, as defined in section II.14. ("Individual Settlement
8 Payment"), above. Participating Class Members must cash Individual Settlement Payments
9 from the First Settlement Distribution within one hundred and twenty (120) calendar days after
10 it is mailed. If a check is returned to the Settlement Administrator, the Settlement
11 Administrator will make all reasonable efforts to re-mail it to the Participating Class Member
12 the correct address. If the check remains uncashed by the expiration of the 120-day period, the
13 Settlement Administrator will issue the unclaimed funds along with any other residue of the
14 Net Settlement Amount to the parties' designated *cy pres* recipient, as described in section
15 VII.6., below.

16 5. In the event any Participating Class Member who, for reason of being
17 inadvertently omitted from Respondents' records or not receiving notice of the settlement, did
18 not cash his or her check prior to the lapse of the 120-day period following the First Settlement
19 Distribution comes forward to counsel for the Parties or to the Claims Administrator with a
20 valid, albeit late, claim prior to the Second Settlement Distribution, the Claims Administrator
21 shall issue to such Participating Class Member his or her pro rata share of the First Settlement
22 Distribution and his or her pro rata share of the Second Settlement Distribution at the time of
23 the Second Settlement Distribution, as defined in section II.14. ("Individual Settlement
24 Payment"), above. In this manner, the Net Settlement Amount at the time of the Second
25 Settlement Distribution will be treated as a reserve fund for late or unanticipated claims.

26 6. After payments due to the Class Representatives, Class Counsel, the LDWA,
27 the Claims Administrator, the Participating Class Members, and the employer's portion of state
28 and federal taxes, are paid, any remaining unpaid portion of the Gross Settlement Amount, if

1 any, shall be paid to the State of California and *cy pres* recipient(s) proposed by the Class
2 Representatives and approved by the Arbitrator. Pursuant to the terms of Cal. Code of Civ.
3 Proc. § 384, any amounts distributed under this paragraph shall be paid as follows: twenty-five
4 percent (25%) to the State Treasury for deposit in the Trial Court Improvement and
5 Modernization Fund, twenty-five percent (25%) to the State Treasury for deposit in the Equal
6 Access Fund of the Judicial Branch, and fifty-percent (50%) to the *cy pres* recipient(s). Class
7 Representatives will propose Legal Aid at Work, located at 180 Montgomery Street, Suite 600,
8 in San Francisco, California, 94104-4244, as a *cy pres* beneficiary, subject to approval by the
9 Arbitrator.

10 **VIII.**

11 **NOTICE TO CLASS MEMBERS**

12 **A. Notice Process**

13 1. Each Class Member will be fully advised of the Settlement. The Settling Parties
14 have jointly drafted a Notice of Pendency of Class Action Settlement (“Notice”). The Settling
15 Parties’ agreed upon proposed Notice is included herewith at **Exhibit 1**. The Notice includes,
16 but is not limited to: information regarding the nature of the Action; a summary of the
17 substance of the Settlement; the Class Member definition; the release of claims; the work week
18 dispute procedure; the procedure and time period to request exclusion from, or object to the
19 settlement; the date set for the final approval hearing; and the formula used for the Individual
20 Settlement Payments. The Notice will be mailed with an Information Form (**Exhibit 2**) (the
21 “Notice Packet”). The Notice Packet and all accompanying documents shall be in English.

22 2. Within 14 days after the Arbitrator grants Preliminary Approval, Respondents
23 shall provide the Administrator with the name, last known mailing address and telephone
24 number (if readily available) of each Class Member, along with a listing of the total number of
25 work days each Class Member worked, and the position (RN, LVN, CNA, etc.) held during
26 the Class Period

27 3. The Claims Administrator shall mail the Notice Packet to the Class Members
28 via first-class regular U.S. mail within 14 days of receiving the Class Member information

1 from Respondents. Prior to mailing, the Claims Administrator will perform a search based on
2 the National Change of Address Database to update and correct for any known or identifiable
3 address changes. For each Notice Packet returned as undeliverable, without a forwarding
4 address, the Administrator will perform a single computer and/or “skiptrace” search to obtain
5 an updated address.

6 4. Class Members will have forty-five (45) days from the mailing of the Notice
7 Packet to submit a Request For Exclusion or to submit any objections (which periods shall run
8 concurrently).

9 5. All Requests For Exclusion will be submitted to the Claims Administrator, who
10 will timely certify jointly to Class Counsel and Respondents’ Counsel the forms that were
11 timely and correctly submitted.

12 6. Respondents’ payroll records will be presumptively determinative in any
13 dispute over entitlement to payment or over membership in the Class.

14 7. The Settling Parties agree to take all steps required to comply with California
15 Rule of Court Rule 3.769.

16 8. The Claims Administrator shall provide Class Counsel, at least twenty (20) days
17 prior to the final fairness and approval hearing, with a declaration specifying the due diligence
18 it has undertaken with regard to the mailing of the Notice Packet. Class Counsel, in consort
19 with Respondents’ Counsel, shall then file a motion for final approval of the Settlement and a
20 motion for fees and costs before the final approval hearing date, and will provide the
21 declaration from the Claims Administrator to the Arbitrator in connection with the final
22 approval motion documents.

23 **B. Contents of Information Form**

24 The Claims Administrator will mail to all Class Members a Notice Packet that includes
25 an Information Form. The Information Form will notify the recipients that they need not return
26 the document to receive a settlement award, will state the number of shifts worked in the Class
27 Period, and will enable them to dispute the days worked or update their contact Information.
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1 **C. Dispute Procedures for Class Members**

2 1. Each Information Form will include a notice of work days form listing the total
3 “Individual Days Worked,” which will be the total number of shifts worked by an individual
4 Class Member during the Covered Time Frame according to Respondents’ payroll records.

5 2. To the extent a Class Member disputes the information listed on his or her Class
6 Information Form of work days, the Class Member may produce evidence to the Claims
7 Administrator showing such other dates he or she contends should be shown on the form.
8 Respondents’ records will be presumed determinative. The Class Counsel and Respondents’
9 Counsel will meet and confer to evaluate the evidence submitted by the Class Member. If the
10 counsel cannot agree, the dispute will be submitted to the Arbitrator whose decision as to which
11 information should be applied will be binding.

12 **D. Requirements for Participation in Class Settlement Class Members**

13 All Class Members who do not request exclusion will automatically be eligible to
14 participate in this Settlement and become a Participating Class Member and receive their
15 Individual Settlement Payments.

16 **E. Requirements for Exclusion from Class Settlement**

17 1. In order for a Class Member to validly and effectively request exclusion from,
18 and opt out of, this Settlement, the Class Member must submit a timely and valid written
19 Request for Exclusion directly to the Administrator.

20 2. To be timely, the Request for Exclusion must be postmarked no later than forty-
21 five (45) calendar days after the Notice Packet was first mailed.

22 3. To be valid, the Request for Exclusion shall contain a statement that clearly
23 conveys the Class Member’s request to be excluded from the Settlement, their full name,
24 mailing address, telephone number, last four digits of their social security number, and must
25 be signed and dated. No Request for Exclusion will be honored if postmarked after the
26 deadline.

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1 **F. Claims Administrator's Notification Requirements**

2 1. The Claims Administrator will certify jointly to Class Counsel and
3 Respondents' Counsel which Requests for Exclusion were timely or untimely returned or
4 otherwise submitted.

5 2. No later than twenty (20) calendar days prior to the final fairness and approval
6 hearing, the Administrator will submit a report to Respondents' Counsel and Class Counsel of
7 (a) the calculation of the amounts due to each Participating Class Member pursuant to this
8 Settlement and the average, low and high Individual Settlement Payments and the Class
9 Representatives' payment, (b) all timely, valid Requests for Exclusion, and (c) all objections
10 received.

11 3. The Claims Administrator shall be responsible for issuing the payments to
12 Participating Class Members and calculating, reporting and withholding all payroll tax
13 withholdings required by state and federal law and will file proof of payment with the
14 Arbitrator upon request.

15 **IX.**

16 **OBJECTIONS TO SETTLEMENT**

17 **A. Deadline for Objections**

18 Any Class Member who has not opted out of the Settlement and who wishes to object
19 to the Arbitrator's approval of this Settlement must notify the Arbitrator, Class Counsel,
20 Respondents' Counsel, and the Claims Administrator of their objection, in writing, no later
21 than forty-five (45) calendar days after the Notice mailing date. The objection must state the
22 factual and legal basis for the objection and must identify exhibits and/or witnesses, if any, that
23 the objecting Class Member intends to present at the final approval hearing. Any Class Member
24 who opts out of the Settlement shall not have standing to object to the Settlement or appear at
25 the final approval hearing.

26 **B. Failure to Object**

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1 Any Class Member who fails to file a timely written objection shall be foreclosed from
2 objecting to this Settlement, unless otherwise authorized by the Arbitrator prior to entry of
3 final approval.

4 **C. Responses to Objections**

5 Counsel for the Settling Parties shall file any response to any objections filed by objecting
6 Class Members at least seven (7) calendar days before the final fairness and approval hearing.

7 **X.**

8 **DUTIES OF THE PARTIES PRIOR TO PRELIMINARY ARBITRATOR**

9 **APPROVAL**

10 1. The Settling Parties will work together expeditiously to obtain preliminary and
11 final approval of this Settlement. Promptly upon execution of the Agreement, the Settling
12 Parties shall apply to the Arbitrator for the entry of an Order Granting Preliminary Approval
13 of the Settlement providing for, among other things, the following:

14 a. Scheduling a final fairness and approval hearing on the question of
15 whether the proposed Settlement should be finally approved as fair, reasonable and
16 adequate as to the Class Members, and providing that such final fairness and approval
17 hearing be scheduled for a date that is no earlier than the date required to ensure
18 compliance with California Rules of Arbitrator Rule 3.769;

19 b. Approving as to form and content the proposed Notice (**Exhibit 1**);

20 c. Approving as to form and content the proposed Information Form and
21 instruction (**Exhibit 2**);

22 d. Directing the mailing of the Notice Packet by first class mail to the Class
23 Members;

24 e. Preliminarily approving the Settlement;

25 f. Preliminarily certifying the class for settlement purposes only;

26 g. Approving Robert S. Arns and associates of the Arns Law Firm and
27 Kathryn A. Stebner and associates of Stebner and Associates; and
28

1 h. Preliminarily approving the requested Class Counsel’s attorneys’ fees
2 and costs, Class Representative’s Enhancement Payments, the LWDA allocation, and
3 allocated Claims Administration Costs subject to the Arbitrator’s final approval at the
4 final fairness and approval hearing.

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6 **XI.**

7 **DUTIES OF PARTIES FOLLOWING PRELIMINARY ARBITRATOR APPROVAL**

8 1. Class Counsel will move for final approval of the Settlement, which motion will
9 include a request for final approval of an award of the Class Representative’s Enhancement
10 Payments and Class Counsel’s attorneys’ fees and costs pursuant to the Settlement, which
11 motion and requests Respondents will not oppose subject to the limits in the Agreement.
12 Respondents’ Counsel shall review and approve the final approval papers before filing,
13 excluding Class Counsel’s request for attorneys’ fees.

14 2. If the Arbitrator does not grant final approval of the Settlement, or if the
15 Arbitrator’s final approval of the Settlement is reversed or materially modified on appellate
16 review, then this Settlement will become null and void as discussed further below.

17 3. In connection with seeking final approval by the Arbitrator of the Settlement,
18 Class Counsel will submit a proposed Order Granting Final Approval of Class Action
19 Settlement. The Settling Parties agree that, in connection with final approval of the Settlement,
20 the Arbitrator will enter judgment pursuant to California Rule of Arbitrator 3.769(h). These
21 documents shall provide for, among other things, the following:

22 a. Approving the Settlement, adjudging the terms thereof to be fair,
23 reasonable and adequate, and directing consummation of its terms and provisions;

24 b. Approving Class Counsel’s application for an award of attorneys’ fees
25 and reimbursement of costs (up to the maximum discussed above);

26 c. Approving the Class Representative’s enhancement payments (up to the
27 maximums discussed above);
28

1 d. Approving the PAGA award payment to LWDA (up to the maximum
2 discussed above); and

3 e. Certifying the Class for purposes of this Settlement only;

4 **XII.**

5 **SETTLEMENT TERMINATION**

6 1. If this Settlement is not preliminarily or finally approved by the Arbitrator, this
7 Agreement shall be void.

8 2. If 10% or more of the Class Members make valid requests to be excluded from
9 the Class, respondents will have the right, but not the obligation to void the Agreement.
10 Notification of such right to void the Agreement by Respondents must be made in writing to
11 Class Counsel and the Arbitrator within ten (10) calendar days after the Claims Administrator
12 notifies the Settling Parties of the final total number of valid requests to be excluded.

13 3. In such event that the Agreement is void or voided, the following provisions
14 will become effective:

15 a. Nothing in this Agreement shall be construed as a determination,
16 admission, or concession of any issue in this Action or in any other action or
17 proceeding, and nothing in this Agreement may be offered into evidence for any
18 purpose;

19 b. The Settling Parties expressly reserve their rights with respect to the
20 prosecution and defense of an Action based on the facts which form the basis of this
21 settlement as if this Agreement never existed;

22 c. Settlement payments already made by Respondents held in escrow shall
23 be returned in full to Respondents within five (5) calendar days.

24 d. Respondents and the Class Representatives shall be equally responsible
25 for any costs for notice administration incurred by the Administrator through that date.
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XIII.

PARTIES' AUTHORITY

The respective signatories to the Settlement represent that they are fully authorized to enter into this Settlement and bind the respective Settling Parties to its terms and conditions.

XIV.

MUTUAL COOPERATION

The Settling Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including but not limited to executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement. The Settling Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Arbitrator, or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Respondents and its counsel, take all necessary steps to secure the Arbitrator's approval of the Settlement and entry of a Final Judgment.

XV.

NO PRIOR ASSIGNMENTS

The Settling Parties 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 released and discharged in this Settlement.

XVI.

NOTICES

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

To the Class:

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Robert S. Arns
Jonathan E. Davis
Kevin M. Osborne
Julie C. Erickson
The Arns Law Firm
515 Folsom St., 3rd Floor
San Francisco, CA 94105

To Respondents:

Laura K. Sitar
Pleiss Sitar McGrath Hunter & Hallack
5510 Trabuco Road
Irvine, CA 92620

XVII.

CONSTRUCTION

The Settling Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Settling Parties and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his/her/its counsel participated in the drafting of this Settlement.

XVIII.

MODIFICATION

This Agreement may not be changed, altered, or modified, except in writing and signed by the Settling Parties, and approved by the Arbitrator, with the exception of modifications and adjustments to the proposed Notice and Information Form as ordered by the Arbitrator.

Modifications which do not fundamentally change the structure of the Agreement may be agreed to on behalf of One Class Representatives by signature of Class Counsel. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Settling Parties.

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XIX.

INTEGRATION CLAUSE

This Agreement contains the entire agreement between the Settling Parties relating to the settlement contemplated hereby, and replaces all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel. No rights under this Settlement may be waived except in writing. In entering into this Agreement, the Settling Parties recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.

XX.

BINDING ON ASSIGNS

This Settlement shall be binding upon and inure to the benefit of the Settling Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

XXI.

COUNTERPARTS

This Settlement may be executed by electronic transmission, facsimile and in counterparts, and when each Settling Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Settling Parties.

XXII.

CLASS CERTIFICATION

1. Respondents and Class Counsel agree that this Settlement and the motion for preliminary approval seeking, *inter alia*, certification of a class is for purposes of the settlement only and if, for any reason, the Settlement is not approved, the certification will have no force or effect and will be immediately revoked. Respondents and Class Counsel further agree that certification for purposes of the Settlement is in no way an admission that class certification is

1 proper under the more stringent standard applied for litigation purposes and that this Settlement
2 will not be admissible in this or any other proceeding as evidence that (i) a class should be
3 certified as Claimants have proposed, or (ii) Respondents are liable to Claimants or the other
4 Class Members as Claimants alleged.

5 2. This Settlement is contingent upon the approval and certification by the
6 Arbitrator of the class for settlement purposes only. This Settlement shall be deemed null and
7 void and shall be of no force or effect whatsoever, and shall not be admitted, referred to, or
8 utilized by any of the Settling Parties for any purpose whatsoever in the event that:

9 a. The Arbitrator does not approve this Settlement and does not execute an
10 Order of Final Approval;

11 b. The Arbitrator does not finally approve the Settlement as proposed by
12 the Settling Parties and without any modification (unless the Settling Parties agree to
13 said modification in writing);

14 c. The Order of Final Approval as submitted by the Settling Parties does
15 not become final for any reason;

16 d. The Final Approval, as defined herein, does not occur.

17 **XXIII.**

18 **GOVERNING LAW**

19 This Settlement and the exhibits hereto shall be deemed to have been negotiated,
20 executed and delivered, and to be wholly performed, in the State of California. The rights and
21 obligations of the Settling Parties under this Settlement shall be construed and enforced in
22 accordance with, and be governed by, the substantive and procedural laws of the State of
23 California without regard to California's choice of law principles.

24 **XXIV.**

25 **CONTINUING JURISDICTION**

26 Except as otherwise specifically provided for herein, the Arbitrator shall retain
27 jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the
28 administration of the Settlement, and to hear and adjudicate any dispute arising from or related

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to the Settlement. The Settling Parties agree that the Arbitrator has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6.

XXV.

EXECUTION BY PARTIES AND COUNSEL:

This Agreement shall not be contingent upon all Class Representatives executing the Agreement. One Class Representatives signature alone shall be sufficient.

Dated: FEB. 23, 2018

THE ARNS LAW FIRM

By: 

ROBERT S. ARNS
Attorney for Claimants

Dated: _____, 2018

By: _____

Claimant SHARON WALDMAN

Dated: _____, 2018

By: _____

Claimant, DAVID RAUCH

Dated: _____, 2018

By: _____

Claimant, THERESA MASCOLINA

PLEISS SITAR
MCGRATH HUNTER & HALLACK

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XXV.

EXECUTION BY PARTIES AND COUNSEL:

This Agreement shall not be contingent upon all Class Representatives executing the Agreement. One Class Representatives signature alone shall be sufficient.

Dated: THE ARNS LAW FIRM

By: _____
ROBERT S. ARNS
Attorney for Claimants

Dated: 2-27, 2018

By: Sharon Waldman
Claimant SHARON WALDMAN

Dated: _____, 2018

By: _____
Claimant, DAVID RAUCH

Dated: _____, 2018

By: _____
Claimant, TERESA MASCOLINA

PLEISS SITAR
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EXECUTION BY PARTIES AND COUNSEL:

This Agreement shall not be contingent upon all Class Representatives executing the Agreement. One Class Representatives signature alone shall be sufficient.

Dated: THE ARNS LAW FIRM

By: _____
ROBERT S. ARNS
Attorney for Claimants

Dated: _____, 2018

By: _____
Claimant SHARON WALDMAN

Dated: 2/27/18 2018

By:  _____
Claimant, DAVID RAUCH

Dated: _____, 2018

By: _____
Claimant, TERESA MASCOLINA

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XXV.

EXECUTION BY PARTIES AND COUNSEL:

This Agreement shall not be contingent upon all Class Representatives executing the Agreement. One Class Representatives signature alone shall be sufficient.

Dated: THE ARNS LAW FIRM

By: _____
ROBERT S. ARNS
Attorney for Claimants

Dated: _____, 2018

By: _____
Claimant SHARON WALDMAN

Dated: _____, 2018

By: _____
Claimant, DAVID RAUCH

Dated: 2/20/, 2018

By: Teresa Mascolini
Claimant, TERESA MASCOLINA

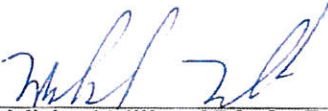
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Dated: 2/26, 2018


PLEISS SITAR MCGRATH HUNTER & HALLACK

By: 
Laura K. Sitar
Attorneys for Respondent

Dated: 2/26, 2018

By: 
Michael Miller, CFO, for EmpRes Healthcare
Management, LLC

Dated: 2/26, 2018

By: 
Michael Miller, CFO, for EmpRes Healthcare
Management, LLC as Manager of Evergreen at
Chico, LLC, Evergreen at Oroville, LLC, 1000
Executive Parkway, LLC, Evergreen at Arvin,
LLC, Evergreen at Bakersfield, LLC,
Evergreen at Lakeport, LLC, Evergreen at
Heartwood Avenue, LLC, Evergreen at Spring
Road, LLC, Evergreen at Tracy, LLC,
Evergreen at Petaluma, LLC Evergreen at
Salinas, LLC, and Evergreen at Fullerton, LLC

ADDITIONAL COUNSEL FOR CLAIMANTS AND CLASS:

Kathryn A. Stebner, State Bar No. 121088
Kelly Knapp, State Bar No. 252013
George Kawamoto, State Bar No. 280358
STEBNER AND ASSOCIATES
870 Market Street, Suite 1212
San Francisco, CA 94102
Tel: (415) 362-9800
Fax: (415) 362-9801

EXHIBIT 1

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NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

Sharon Waldman, et. al. v EmpRes et.al.

If you were an hourly employee for one or more of the following skilled nursing facilities in California, you could get a payment from a class action settlement.

The Arbitrator has authorized this notice. This is not a solicitation from a lawyer.

- A settlement of a class action legal dispute for \$1,900,000, which will be used, in part, to pay claims by California hourly employees at Evergreen at Chico, LLC, Evergreen at Oroville, LLC/1000 Executive Parkway, LLC, Evergreen at Arvin, LLC, Evergreen at Bakersfield, LLC, Evergreen at Lakeport, LLC, Evergreen at Heartwood Avenue, LLC, Evergreen at Spring Road, LLC, Evergreen at Tracy, LLC, Evergreen at Petaluma, LLC Evergreen at Salinas, LLC, Evergreen at Fullerton, LLC, and EmpRes Healthcare Management, LLC. (collectively called “Respondents”) from November 1, 2013 through *<insert date of Preliminary Approval.>*
- The settlement resolves a legal dispute over whether Respondents failed to pay all wages owed and failed to provide all due meal and rest periods; it avoids the costs and risks of pursuing a trial; pays money to hourly employees like you; and releases Respondents from liability.
- The judge in this case has not ruled on the claims. Both sides recognize, however, there are risks, expenses, and business disruption if the lawsuit continues and therefore, they have agreed to enter into a settlement.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully. The Arbitrator in charge of this legal dispute still must decide whether to approve the settlement. Payments will be made if the Arbitrator approves the settlement and any appeals are resolved. Please be patient.
- These rights and options—and the deadlines to exercise them—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Receive a settlement payment. In exchange for the settlement payment, give up your rights to sue any one of the above facilities over the issues in this case.
EXCLUDE YOURSELF BEFORE: (EXCLUSION DEADLINE)	Get no payment. This is the only option that allows you to be part of any other lawsuit against any one of the above facilities about the legal claims in this case.
OBJECT BEFORE: (OBJECTION DEADLINE)	Write to the Arbitrator about why you don’t like the settlement.

GO TO A HEARING	Ask to speak at a hearing before the Arbitrator about the fairness of the settlement.
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WHAT THIS NOTICE CONTAINS

BASIC INFORMATION PAGE 3

- 1. Why did I get this notice package?
- 2. What is this legal dispute about?
- 3. Why is this a class action?
- 4. Why is there a settlement?

WHO IS IN THE SETTLEMENT..... PAGE 4

- 5. How do I know if I am part of the settlement?
- 6. Are there exceptions to being included?
- 7. I'm still not sure if I am included.

THE SETTLEMENT BENEFITS—WHAT YOU GET..... PAGE 4

- 8. What does the settlement provide?
- 9. How much will my payment be?

HOW YOU GET A PAYMENT..... PAGE 5

- 10. How can I get a payment?
- 11. When will I get my payment?
- 12. What am I giving up to get a payment or stay in the Class?

EXCLUDING YOURSELF FROM THE SETTLEMENT..... PAGE 6

- 13. How do I opt-out or exclude myself from the settlement?
- 14. If I don't exclude myself, can I sue any of these facilities for the same thing later?
- 15. If I exclude myself, can I get money from this settlement?

THE LAWYERS REPRESENTING YOU..... PAGE 6

- 16. Do I have a lawyer in the case?
- 17. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT..... PAGE 7

- 18. How do I tell the Arbitrator that I don't like the settlement?
- 19. What's the difference between objecting and excluding myself?

THE FAIRNESS HEARING..... PAGE 7

- 20. When and where will the Arbitrator decide whether to approve the settlement?
- 21. May I speak at the hearing?
- 22. Do I have to come to the hearing?

IF YOU DO NOTHING..... PAGE 8

- 23. What happens if I do nothing at all?

GETTING MORE INFORMATION..... PAGE 8

24. Are there more details about the settlement?

BASIC INFORMATION

1. Why did I get this notice package?

The records of Respondents indicate you were an hourly employee in California between November 1, 2013 and < *insert date of Preliminary Approval* >. You were sent this notice because you have a right to know about a proposed settlement of a class action legal dispute, and about all of your options before the Arbitrator decides whether to approve the settlement. If the Arbitrator approves the settlement and after objections and appeals are resolved, a claims administrator appointed by the Arbitrator will make the payments that the settlement allows.

This package explains the legal dispute, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Arbitrator in charge of the case is the Honorable Robert Freedman (ret.) of JAMS and the case is known as *Sharon Waldman v. EmpRes Healthcare Management, LLC*. The persons who are pursuing the legal dispute are called the Claimants, and the companies against which their allegations have been made are called the Respondents. Two other employees, David Rauch and Theresa Mascolina have joined as Claimants. Their combined allegations are referred to as the “legal dispute” which includes all the skilled nursing facilities affiliated with EmpRes Healthcare Management, LLC in California.

2. What is this legal dispute about?

The legal dispute claims that the named skilled nursing facilities failed to provide all required meal and rest periods to their hourly employees and failed to pay wages owed for missed meal and rest periods, and wages for all work performed. The legal dispute also claims Respondents failed to timely and fully pay final wages at termination, and failed to furnish accurate itemized wage statements, from November 1, 2013 through < *insert date of Preliminary Approval* >.

The Respondent facilities deny they did anything wrong. Each facility contends it properly paid all wages owed, properly provided all meal and rest periods, provided lawful itemized wage statements and properly paid wages upon termination of employment. Each facility contends that none of the claims alleged by the Claimants would succeed in trial or arbitration.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, Sharon Waldman, David Rauch and Theresa Mascolina), have presented their legal dispute on behalf of people who may have similar claims. All these people are a Class or Class Members. One Arbitrator will resolve the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a settlement?

The Arbitrator has not decided in favor of Claimants or Respondents. Claimants think they could have won a significant amount of wages, penalties and interest if they filed a complaint and won a trial or arbitration. Respondents think Claimants would not have won anything. But there was no formal trial or arbitration. Instead, both sides agreed to a settlement. That way they avoid the significant costs of litigation and the hourly employees affected will get compensation without any determination of wrongdoing by any of the Respondent facilities. The Class Representatives and Claimants' attorneys think the settlement is best for all Class Members.

The Arbitrator has given his initial approval to the settlement and has approved Claimants Sharon Waldman, David Rauch and Theresa Mascolina as named Class Representatives and attorneys Robert S. Arns, The Arns Law Firm and Kathryn A. Stebner, of Stebner and Associates are the attorneys for the Class Members (the "Class Counsel").

WHO IS IN THE SETTLEMENT

To see if you will get money from this settlement, you first have to decide if you are a Class Member.

5. How do I know if I am part of the settlement?

The Arbitrator decided that everyone who fits this description is a Class Member:

“

All persons in California who while an employee of a Respondent performed work as hourly, non-exempt registered nurses, licensed vocational nurses, certified nursing assistants, restorative nursing aides, physical, occupational and speech therapists, therapy assistants, and/or therapy aides at any time during the period from November 1, 2013 through <insert date of Preliminary Approval.>

If you Received this notice it means that according to Respondents' records, you are a member of the Settlement Class

6. Are there exceptions to being included?

Yes. If you are a Class Member, you have the option of excluding yourself as stated in Section 13 below.

7. I'm still not sure if I am included.

If you are still not sure whether you are included, you can call the Claims Administrator at (***) ***-**** or Class Counsel at (415) 495-7800 for more information.

THE SETTLEMENT BENEFITS—WHAT YOU GET

8. What does the settlement provide?

Respondents have agreed to pay up to \$1,900,000.00 to settle this legal dispute. Out of the settlement amount, Class Representatives Sharon Waldman, David Rauch and Theresa Mascolina will ask for

\$2,000 each, for their services as Class Representatives. Class Counsel will ask for \$ 632,700 for attorneys' fees and costs, and the Claims Administrator will charge fees associated with administering the settlement, in an amount estimated to be \$38,660. The Arbitrator may approve these payments or smaller amounts. The State of California, Labor & Workforce Development Agency, will also receive \$15,000 for claims under the Private Attorneys General Act. The money remaining in the settlement fund, anticipated to be \$1,207,640, (the "Net Settlement Fund") will be available for distribution to Class Members based on the number of days they worked from November 1, 2013 through <insert date of Preliminary Approval.>

9. How much will my payment be?

Your share of the fund will depend on your position how many days you worked during the class period as an hourly employee. The average payment for each day worked as an hourly employee depends on the job position held. The number of days that Respondents' records show that you worked is listed on your Information Form, which is attached at the end of this packet.

Your claim amount will be calculated based on 50% wages, for which you will receive a W-2, and 50% will be interest and penalties, for which you will receive a Form 1099. You are responsible for paying your taxes on any amount you receive. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid for 120 days.

HOW YOU GET A PAYMENT

10. How can I get a payment

You need do nothing to get a payment.

11. When would I get my payment?

The Arbitrator will hold a hearing on _____, 2018, to decide whether to approve the settlement. If the Arbitrator approves the settlement, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Please be patient. To check on the progress of the settlement, look for updates and important dates on the settlement website: [www.\[website address\]](http://www.[website address]) or you can call the Claims Administrator at 1-***-***-****, or contact Class Counsel at the address or phone number in Section 18, below. Respondents will pay the settlement in two payments. If there are no appeals, the first payment will be approximately March 1, 2019, and the second payment approximately November 1, 2019.

12. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you are staying in the class, and that means that you can't sue or file a claim with any government entity, or be part of any other suit or claim against any of these Respondents about the legal issues in *this* case -- meaning unpaid wages and pay for missed meal or rest periods, wages and any of the penalties that come from those wage and meal and rest period claims. It also means that all of the Arbitrator's orders will apply to you and legally bind you. Unless you exclude yourself, you are staying in the class, and that means that you can't sue.

If you exclude yourself from this legal dispute, you will not be bound by any final approval of this settlement.

EXCLUDING YOURSELF FROM THIS SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue, file a claim with a government entity or continue to sue a Respondent facility on your own about the legal issues in this case, then you must take steps to get out of this case. This is called excluding yourself—or is sometimes referred to as “opting out” of the settlement Class.

13. How do I opt- out or exclude myself from the settlement?

To exclude yourself from this settlement, you must send a letter by mail saying that you want to be excluded from the *Waldman v. EmpRes Healthcare, LLC* case. Your request must contain a statement that clearly conveys the Class Member's request to be excluded from the Settlement, their full name, mailing address, telephone number, last four digits of their social security number, and must be signed and dated. Your right to sue a Respondent facility and/or be part of another class action will be preserved. Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than _____, 2018 to:

EmpRes Settlement Claims Administrator
c/o Phoenix Settlement Administrators
<Insert Address>

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this legal dispute. You may be able to sue (or continue to sue) one of the Respondent facilities in the future over the issues in this case.

14. If I don't exclude myself can I sue Respondents for the same thing later?

No. Unless you exclude yourself, in exchange for the settlement benefits you give up any right to sue Respondents for the claims that this settlement resolves. If you have a pending claim or claims against Respondents, speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own legal dispute if it involves the same issues. Remember, the exclusion deadline is _____, 2018.

15. If I exclude myself can I get money from this settlement?

No. But, you may sue, continue to sue, or be part of a different claim against Respondents.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Arbitrator has appointed Robert S. Arns, The Arns Law Firm and Kathryn A. Stebner, of Stebner and Associates to represent you and other Class Members. These lawyers are called “Class Counsel.” You will not be charged for these lawyers, although they will be compensated from the Settlement fund as discussed in Section 8 and 17. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

Class counsel will ask the Arbitrator to approve payment of up to \$632,700 to them for attorney’s fees and costs. The fees will pay Class Counsel for investigating the facts and negotiating the settlement. The Arbitrator may award less than these amounts.

OBJECTING TO THE SETTLEMENT

You can tell the Arbitrator that you don’t agree with the settlement or some part of it.

18. How do I tell the Arbitrator that I don’t like the settlement?

If you’re a Class Member, you can object to the settlement if you don’t like any part of it. You can give reasons why you think the Arbitrator should not approve it. The Arbitrator will consider your views. To object, you must send a letter saying that you object to the *Waldman v. EmpRes* settlement. Be sure to include your name, address, telephone number, your signature, and state the factual and legal reasons you object to the settlement. Mail the objection to each of these three different places postmarked no later than _____, 2018:

ARBITRATOR	CLASS COUNSEL	RESPONDENTS’ COUNSEL
Hon. Robert Freeman (ret.) JAMS Two Embarcadero Center Suite 1500 San Francisco, CA 94111	Robert S. Arns The Arns law Firm 515 Folsom St. 3rd Floor San Francisco, CA 94105 (415)495-7800	Laura K. Sitar Pleiss Sitar McGrath Hunter & Hallack 5510 Trabuco Road Irvine, CA 92620
	Kathryn A. Stebner Stebner and Associates 870 Market Street, Suite 1212 San Francisco, CA 94102 (415) 362-9800	

19. What's the difference between objecting and excluding myself?

Objecting is simply telling the Arbitrator that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Arbitrator that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE FAIRNESS HEARING

The Arbitrator will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

20. When and where will the Arbitrator decide whether to approve the settlement

The Arbitrator will hold a Fairness Hearing at ____ a.m. on _____, 2018, at JAMS at Two Embarcadero Center, Suite 1500, San Francisco, CA 94111. At this hearing, the Arbitrator will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Arbitrator will consider them. The Arbitrator will listen to people who have asked to speak at the hearing. At or after the hearing, the Arbitrator will decide whether to approve the settlement. If you would like to speak at the hearing, please send a letter indicating you would like to speak to the Arbitrator, Class Counsel, and Respondents' Counsel, at the addresses above.

21. May I speak at the hearing?

You may ask the Arbitrator for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in the *Waldman v. EmpRes* settlement. Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than _____, 2018, and be sent to the Arbitrator, Class Counsel, and Respondents' Counsel, at the three addresses in question 18. You cannot speak at the hearing if you excluded yourself.

22. Do I have to come to the hearing?

No. Class Counsel will answer questions the Arbitrator may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to appear at the hearing unless you choose to do so. As long as you mailed your written objection on time, the Arbitrator will consider it. You may also pay your own lawyer to attend, but it's not necessary.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will automatically receive a settlement payment under the settlement terms. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Respondents about the legal issues in this case, ever again.

GETTING MORE INFORMATION

24. Are there more details about the settlement?

This notice summarizes the proposed settlement. You may call or contact ***** or by calling (***** (Toll Free) if you would like more information about the case.

PLEASE DO NOT CONTACT THE ARBITRATOR OR EMPRES WITH INQUIRIES.

Date: _____, 2018

This Notice has been approved by the Honorable Robert Freedman (ret.), arbitrator for this matter.

EXHIBIT 2

INFORMATION FORM

[Class Member Name]
[Mailing Address 1]
[Mailing Address 2]
[City, State, ZIP]

OUR RECORDS INDICATE THAT YOU WERE EMPLOYED BY DEFENDANTS IDENTIFIED BELOW FOR SOME PERIOD BETWEEN NOVEMBER 1, 2013 TO [P.A.A].

DEFENDANTS INCLUDE:

EmpRes Healthcare Management, LLC	Evergreen at Heartwood Avenue, LLC
Evergreen at Chico, LLC	Evergreen at Spring Road, LLC
Evergreen at Oroville, LLC	Evergreen at Tracy, LLC
1000 Executive Parkway, LLC	Evergreen at Petaluma, LLC
Evergreen at Arvin, LLC	Evergreen at Salinas, LLC
Evergreen at Bakersfield, LLC	Evergreen at Fullerton, LLC
Evergreen at Lakeport, LLC	

YOU DO NOT NEED TO RETURN THIS INFORMATION FORM TO RECEIVE A SETTLEMENT AWARD.

Return this form only if:

- 1. You disagree with the number of your work days stated below; or**
- 2. You wish to update your address**

EMPLOYMENT POSITION: [Position (i.e. RN, LVN, RNA, CNA, ST, PT, OT, Asst. or Aide)]
WORK DAYS FROM NOVEMBER 1, 2014 TO [P.A.D]: [# OF WORK DAYS]

If you believe the number of eligible work days listed above is incorrect, please enter the number of eligible work days you believe you worked for Defendants in California performing work in a non-exempt position from November 21, 2013 TO [p.a.d]: ___ work days.

Insert Any Name or Address Corrections Below:

Mailing Address _____
Mailing Address _____
City, State, ZIP _____

Unless you dispute the number of work days listed above, or wish to change your address, you **DO NOT** need to return this Information Form. If you disagree with the number of work days listed above, you **must** fill-out the bottom portion of this Information Form and mail back along with any documentation you have to support your claim of a different number of eligible work days. This Information Form and your documentation **must be mailed directly to the Settlement Administrator, Phoenix Settlement Administration, 4590 MacArthur, Suite 500, Newport Beach, CA 92660 postmarked on or before [date].**

X _____
(Sign your name)

(Date you signed this document)

(Print your Full Name)

X X X - X X - _____
(Last 4 Digits of Your Social Security Number)
[FOR IDENTITY VERIFICATION PURPOSES ONLY]