

## **CLASS-ACTION AND PAGA SETTLEMENT AGREEMENT**

This Class-Action and PAGA Settlement Agreement (“Agreement” or “Settlement Agreement”) is made between DANIELLE HOWELL (“Plaintiff”), on the one hand, and JONBEC CARE, INC. (“Defendant”), on the other. Plaintiff and Defendant will at times be referred to collectively as the “Parties” and may individually be referred to as a “Party.”

### **RECITALS**

WHEREAS, on November 27, 2019, Plaintiff gave notice to the California Labor and Workforce Development Agency (“LWDA”) by online filing, and to Defendant by certified mail, of various provisions of the California Labor Code alleged by Plaintiff to have been violated by Defendant, including the facts and theories to support those alleged violations.

WHEREAS, the Parties engaged in mediation with Mediator Todd A. Smith on July 10, 2020, regarding the claims raised by Plaintiff.

WHEREAS, prior to the mediation, the Parties had entered into several agreements tolling the applicable statutes of limitations for all claims stemming from Plaintiff’s employment with Defendant, including any such claim brought on behalf of a class or on a representative basis. Under those agreements, the statutes of limitations were tolled from January 23, 2020, through July 17, 2020.

WHEREAS, on September 14, 2020, the Parties entered into a Memorandum of Understanding concerning Plaintiff’s claims, under which the Parties agreed to the terms of a mediator’s proposal from Mediator Todd A. Smith. The Memorandum of Understanding extended the tolling period through the date that Plaintiff files the Complaint (defined below). The Memorandum of Understanding provides that the Parties will execute a long-form settlement agreement concerning Plaintiff’s settled claims.

WHEREAS, the Parties wish to resolve and settle Plaintiff’s claims in their entirety, including the Released Claims (defined below) against the Released Parties (defined below).

Therefore, in consideration of the promises in this Agreement, the Parties agree as follows:

### **DEFINITIONS**

1. “Class” or “Class Members” refers to the class, which the Parties agree shall be certified for settlement purposes only, as follows: All individuals who were employed by Defendant in California as non-exempt employees at any time during the period of January 23, 2016, through September 16, 2020.

2. “Class Counsel” is Greenstone Law APC and Zelenski Law, PC.

3. “Class Data” means the best information in Defendant’s possession, custody, or control with respect to each Class Member’s name, last-known address, Social Security number, last-known telephone number, last-known e-mail address, dates of employment during the

Settlement Period, and Workweeks.

4. “Class Representative” refers to Plaintiff.
5. “Complaint” refers to the complaint to be filed by Plaintiff in a mutually agreeable state-court venue for purposes of effectuating the Settlement.
6. “Court” refers to the state-court venue where the Complaint is filed.
7. “Defendant’s Counsel” is Colin P. Calvert from Fisher & Phillips LLP.
8. “Effective Date” is the date when all of the following have occurred:
  - a. Execution of this Settlement Agreement by the Parties and their respective counsel of record.
  - b. Entry of a preliminary-approval order.
  - c. Filing by Class Counsel, on or before the date of the final-approval hearing, of the Settlement Administrator’s verification, in writing, that the Notice to the Class has been disseminated in accordance with the Court’s order granting preliminary approval of the Settlement.
  - d. Entry of an order by the Court granting final approval of the Settlement.
9. “Employer Taxes” refer to the employer’s share of the payroll taxes and contributions owed with respect to the wage portions of the Individual Settlement Shares to Settlement Class Members under local, state, and federal laws, *inter alia*, the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and for unemployment insurance. The Employer Taxes are not included in the Gross Settlement Amount.
10. “Gross Settlement Amount” refers to the amount of one million dollars and zero cents (\$1,000,000.00) that Defendant will pay in its entirety and without reversion to Defendant, pursuant to this Agreement.
11. “Individual Settlement Shares” means the *pro rata* portion of the Net Settlement Amount distributable to each Settlement Class Member, based upon the Settlement Class Members’ respective number of Workweeks.
12. “LWDA” means the California Labor and Workforce Development Agency.
13. “Net Settlement Amount” means the funds available for distribution to Settlement Class Members from the Gross Settlement Amount after deducting the following, as approved by the Court: (a) Settlement-Administration Expenses, (b) Class Counsel’s attorneys’ fees and costs, (c) the Class Representative’s Service Award, and (d) the LWDA’s share of the PAGA Payment.
14. “Notice” means the notice of class-action settlement, in a form to be determined by

Class Counsel and Defendant's Counsel.

15. "PAGA Payment" means thirty-thousand dollars and zero cents (\$30,000.00) from the Gross Settlement Amount, with 25% of the payment going to Settlement Class Members and 75% going to the State of California.

16. "Parties" refers to the Class Representative and Defendant, collectively.

17. "Released Parties" refers to Defendant, as well as all of Defendant's current and former parent companies, affiliates, subsidiaries, trustees, predecessors, assignees, employees, officers, directors, policyholders, attorneys, agents, general agents, agencies, brokers, third-party administrators, insurers, reinsurers, and all other entities and persons in privity with Defendant.

18. "Released Claims" has the meaning set forth in section 45 below.

19. "Response Deadline" means the date sixty (60) calendar days after the Settlement Administrator first delivers the Notice to the Class.

20. "Service Award" refers to the amount to be paid to Plaintiff to compensate her for her time and effort on behalf of the Class.

21. "Settlement" means the terms and conditions set forth in this Agreement.

22. "Settlement Class" or "Settlement Class Members" means all Class Members who do not timely submit a valid request for exclusion, consistent with the procedures described herein.

23. "Settlement Administrator" means a third-party company, mutually agreed to by the Parties, that is responsible for administering the Settlement. The Parties each represent that they will select a Settlement Administrator in which they have no financial interest, and with which they have or other relationship that could create a conflict of interest.

24. "Settlement-Administration Expenses" means expenses incurred by the Settlement Administrator in effectuating the Settlement, distributing Notice to the Class Members, settlement administration, and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

25. "Settlement Period" means the time period of January 23, 2016, through September 16, 2020.

26. "Workweeks" are the number of weeks that a Settlement Class Member worked for Defendant in California during the Settlement Period as a non-exempt employee, which will be calculated by the Settlement Administrator using inclusive dates of employment during the Settlement Period to determine the total number of days an employee was employed by Defendant, and dividing that number by seven to compute the number of workweeks. Each Settlement Class Member who is a former employee will be deemed to have worked an additional two Workweeks.

## **SETTLEMENT PAYMENT**

27. In consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

28. **Complaint:** Plaintiff agrees to file a Complaint in a mutually agreeable state-court venue for purposes of effectuating the Settlement. The allegations in the Complaint will be limited to those matters addressed during the July 10, 2020, mediation between the Parties.

29. **Settlement Amount:** Defendant agrees to pay a Gross Settlement Amount of one million dollars and zero cents (\$1,000,000.00) on a non-reversionary basis, and Defendant will not retain any portion of the Gross Settlement Amount. The Gross Settlement Amount includes: (i) Class Counsel's attorneys' fees and costs, (ii) a Class Representative Service Award, (iii) a PAGA Payment, and (iv) the Settlement Administrator's Settlement-Administration Expenses. Defendant shall fund 50% the Gross Settlement Amount (\$500,000) to the Settlement Administrator within three (3) business days of the final-approval order, \$250,000.00 within three (3) months of the final-approval order, and the remaining \$250,000.00 within six (6) months of the final-approval order. Defendant's principals, Jonathan Joseph and Becky Joseph, shall personally guarantee the second and third installment payments in the gross amount of five-hundred thousand dollars and zero cents (\$500,000.00). No benefit, including, but not limited to, 401(k) retirement benefits, shall increase or accrue as a result of any payment made as a result of this Agreement.

a. **Attorneys' Fees and Expenses:** In conjunction with final approval of this Settlement Agreement, Class Counsel will request attorneys' fees in an amount totaling up to one-third of the Gross Settlement Amount. Defendant will not oppose such application for attorneys' fees. Defendant also agrees not to oppose a request for actually incurred and documented attorneys' expenses.

b. **Service Award:** Defendant shall not oppose a request for a Class Representative service award to Plaintiff of up to \$10,000.00, to be paid out of the Gross Settlement Fund.

c. **PAGA Payment:** The PAGA payment of \$30,000.00 shall be made from the Gross Settlement Amount, with 25% of the payment going to Class Members (as part of their Individual Settlement Shares) and 75% of going to the State of California.

d. **Settlement-Administration Expenses:** Settlement-Administration Expenses shall be paid from the Gross Settlement Amount. If the Settlement Agreement is terminated for any reason, then Defendant shall bear the cost of any Settlement-Administration Expenses incurred up to that date.

## **ALLOCATION AND TAX TREATMENT**

30. **Treatment of Individual Settlement Shares:** For tax-characterization purposes and

the payment of taxes, the distribution to Settlement Class Members shall be treated as follows: (i) 55% shall be treated as lost wages, subject to applicable withholdings, for which an IRS Form W-2 will be issued to the extent required; and (ii) 45% will be treated as liquidated damages, penalties, and interest, for which an IRS Form 1099 shall be issued to the extent required.

31. Administration of Taxes by the Settlement Administrator: The Settlement Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator will also be responsible for forwarding all payroll taxes, contributions, and withholdings to the appropriate government authorities.

32. Tax Liability: Plaintiff, Class Counsel, the Released Parties, and Defendant's Counsel make no representations or warranties as to the tax consequences, treatment, or legal effect of any payments made under this Settlement Agreement, and they do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability; nor shall anything in this Settlement Agreement be relied on as such. Plaintiff and Settlement Class Members understand and agree that they will be solely responsible for correctly characterizing any compensation received under the Settlement on his/her personal income-tax returns and paying any and all taxes due for any and all amounts paid to them under the Settlement.

### **APPOINTMENT AND DUTIES OF SETTLEMENT ADMINISTRATOR**

33. The Settlement Administrator will perform the duties of translating and distributing the Notice in both English and Spanish; receiving, reviewing, and processing requests for exclusion, objections, and disputes regarding Workweeks; and calculating, verifying, and distributing Individual Settlement Payments to Settlement Class Members, as described in this Settlement Agreement. The Settlement Administrator will provide weekly reports to the Parties, in summary or narrative form, regarding the number of timely Workweeks disputes, requests for exclusion, and objections that the Settlement Administrator received, and will provide a declaration of due diligence to the Parties regarding notice administration within ten (10) business days of the deadline for a response to be issued.

### **NOTICE TO THE CLASS**

34. Within ten (10) business days of the date that the Court grants preliminary approval of the Settlement, Defendant shall provide the Class Data to the Settlement Administrator. Defendant agrees to provide this information in a format reasonably acceptable to the Settlement Administrator.

35. The Settlement Administrator shall send the Notice in both English and Spanish to the Settlement Class Members, by first-class U.S. mail and by e-mail, within fifteen (15) business days of the date on which the Class Data is received by the Settlement Administrator from Defendant. The Notice shall contain the estimated Individual Settlement Share that each Class Member is eligible to receive, as well as their respective Workweeks. The Notice will provide information regarding the nature of the case; the terms of the Settlement; the binding nature of the

release; the date of the final-approval hearing; and Class Members' right to request exclusion from the Settlement, object to the Settlement, or dispute the Workweeks credited to each of them.

a. Class Data Updates: Prior to sending the Notice to Class Members, the Settlement Administrator shall use the United States Postal Service National Change of Address List to locate updated addresses to ensure that the Notice is sent to all Class Members at the addresses most likely to result in immediate receipt of the Notice.

b. Undeliverable Mailed Notices: Any mailed Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of a robust skip-trace procedure or other search, and, if another mailing address is identified by the Settlement Administrator, shall perform a re-mailing within three (3) business days of receipt of the returned Notice.

c. Unopened E-Mail Notices: For any e-mailed Notices that the Settlement Administrator reasonably determines did not bounce back but were unopened, the Settlement Administrator shall send one additional e-mailed Notice to all such Class Members.

d. Settlement Website: At the same time that the Notice is initially sent to the Class, the Settlement Administrator shall establish a Settlement website. The Settlement website will contain information relevant to Class Members, including, but not limited to, all applicable deadlines, this Settlement Agreement, the Notice, all papers filed by the Parties in support of the Settlement (including any motion for attorneys' fees or costs), orders of the Court pertaining to the Settlement, and contact information for reaching the Settlement Administrator via a toll-free telephone number, facsimile, e-mail, and U.S. mail. The Settlement website shall be rendered inactive 200 calendar days after the date that Individual Settlement Checks are mailed to Settlement Class Members.

e. Supplemental Notice to the Class: To the extent that the Parties agree that supplemental notice to the Class should be provided (*e.g.*, for the purpose of correcting an error by the Settlement Administrator in connection with disseminating the original Notice), the Parties may direct the Settlement Administrator to provide such supplemental notice without the need of any intervention or approval by the Court, provided that the Parties agree on the language of such supplemental notice.

36. Upon completion of the steps outlined in section 35 above, the Parties, their respective counsel, and the Settlement Administrator shall be deemed to have satisfied their obligations to provide notice to the Class, and, regardless of whether a Class Member actually receives the Notice or cashes his or her Individual Settlement Payment check, he or she shall remain a Settlement Class Member and shall be bound by all the terms of the Settlement Agreement (provided that he or she has not validly excluded himself or herself from the Settlement).

### **EXCLUSION PROCESS**

37. Class Members may opt out of the Settlement by submitting a written request to be excluded from the Settlement to the Settlement Administrator. Any such request for exclusion must be mailed, e-mailed, or faxed to the Settlement Administrator, postmarked or time-stamped no later than fourteen (14) calendar days after the date that Plaintiff files motions for final approval of the Settlement and approval of Class Counsel's attorneys' fees and costs, Settlement-Administration Expenses, the Class Representative's Service Award, and the LWDA's share of the PAGA Payment. A request for exclusion must: (a) state the case name and number; (b) state the Class Member's name, current address, current telephone number, and last four digits of his or her Social Security number; (c) contain a clear statement that the Class Member wishes to opt out of the Settlement; and (d) be signed by the Class Member. Requests for exclusion that do not include all required information, or that are not submitted on a timely basis, will preliminarily be deemed invalid and ineffective; however, the Parties agree to meet and confer on late or ambiguous requests for exclusion, and may mutually agree to accept them for good cause shown.

### **OBJECTION PROCESS**

38. Class Members who do not opt out of the Settlement (*i.e.*, Settlement Class Members) have the right to object to the Settlement. Written objections to the Settlement must be mailed, e-mailed, or faxed to the Settlement Administrator, postmarked or time-stamped no later than fourteen (14) calendar days after the date that Plaintiff files motions for final approval of the Settlement and approval of Class Counsel's attorneys' fees and costs, Settlement-Administration Expenses, the Class Representative's Service Award, and the LWDA's share of the PAGA Payment.

39. Objections must: (a) state the Settlement Class Member's name, current address, current telephone number, and last four digits of his or her Social Security number; (b) state the case name and number; (c) describe why the Settlement Class Member objects to the Settlement; and (d) be signed by the Class Member. Deficient or untimely objections to the Settlement shall not be considered, unless otherwise ruled by the Court.

40. All objections to the Settlement that are submitted to the Settlement Administrator shall be forwarded by the Settlement Administrator to respective counsel for the Parties within three (3) calendar days of receipt.

41. Class Members who submit both a timely request for exclusion and a timely objection will be treated as having objected only, and the request for exclusion will be deemed invalid.

### **DISPUTE PROCESS**

42. The Notice will apprise each Class Member of the total number of Workweeks that have been credited to him or her, based on Defendant's records that have been used to calculate his or her estimated Individual Settlement Share. These calculations shall be based on Defendant's

records, which are presumed to be correct unless a Class Member provides credible or persuasive evidence to the contrary.

43. If a Class Member does not wish to dispute the Workweeks that are set forth in the Notice, then the Class Member need do nothing, and payment will be made based on Defendant's records.

44. If a Class Member wishes to dispute or challenge the Workweeks that are set forth in the Notice, then the Class Member must submit a written dispute to the Settlement Administrator, by mail, e-mail, or facsimile, postmarked or time-stamped on or before the Response Deadline. To be valid, any Workweeks dispute must contain: (a) the case name and number; (b) the Class Member's name, current address, current telephone number, and last four digits of his or her Social Security number; (c) a clear statement explaining that the Class Member wishes to dispute his or her Workweeks; (d) the number of Workweeks that he or she contends is correct; (e) documentation or other evidence to support the Class Member's contention that he or she was not credited with the correct number of Workweeks; and (f) your signature. Disputes that do not include all required information, or that are not submitted on a timely basis, will preliminarily be deemed invalid and ineffective; however, the Parties agree to meet and confer on late or ambiguous disputes, and may mutually agree to accept them for good cause shown. Defendant agrees to provide the Settlement Administrator with additional documents necessary to assess the dispute, if such documents exist. All disputes shall be resolved either by agreement of Class Counsel and Defendant's Counsel, or by decision of the Settlement Administrator.

### **RELEASE**

45. Class Release: Upon the Effective Date, and except as to such rights or claims as may be created by this Settlement Agreement, Plaintiff and all Settlement Class Members fully release and discharge the Released Parties from any and all claims, debts, wages, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, restitution, injunctive relief, actions, or causes of action arising under California law that were pled in the Complaint, or that could have been pled in the Complaint, based on the factual allegations contained in the Complaint, including, but not limited to, any such claims for wage-statement violations; meal-period violations, rest-period violations, and associated premium pay; interest; "waiting-time" penalties, violations of California Labor Code sections 201-04, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802; and claims pursuant to California Business & Professions Code section 17200, *et seq.* and California Labor Code section 2698 *et seq.* that arose during the Settlement Period ("Released Claims"). The Released Claims expressly exclude all disability claims, workers' compensation claims, and claims outside the Settlement Period.

46. Individual Release: Plaintiff, for herself and for her heirs, executors, administrators, successors, and assigns, hereby releases, acquits, and forever discharges Defendant and the Released Parties from any and all claims, demands, obligations, actions, causes of action, liabilities, debts, promises, agreements, demands, interest, attorneys' fees, losses, and expenses, known or unknown, suspected or unsuspected, filed or unfiled, that she has or may have arising out of any known or unknown fact, condition, or incident occurring prior to the date of her signing this Agreement, and arising out of or in connection with any claims, demand, charges, or



complaints relating to her employment with the Released Parties. This includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, interest, attorneys' fees, costs, actual damages, compensatory damages, and punitive damages, as well as all claims for any other type of relief relating to, arising out of, or based upon any claims for contribution arising out of the Complaint. Nothing in this Agreement is intended to release any workers' compensation claims, claims related to Plaintiff's employment arising after the date of execution of this Agreement, or any claims that are unrelated to the Complaint.

47. Waiver of Section 1542: Plaintiff hereby represents that it is her intention in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damage, liability, charge, attorneys' fees, and costs herein above released. Plaintiff hereby expressly waives and relinquishes all of her rights and benefits, if any, arising under the provisions of California Civil Code section 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

48. Effect of Release: This Settlement Agreement in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in California Civil Code section 1541, that is, the extinguishment of obligations herein designated.

#### **JUDICIAL APPROVAL OF SETTLEMENT AND CLASS CERTIFICATION**

49. For settlement purposes only, the Parties agree that the Class shall be certified. This Settlement Agreement is contingent upon the approval and certification by the Court of the Class for settlement purposes only. Defendant does not waive, and instead expressly reserves, its right to challenge the propriety of class certification for any purpose should the Court not approve the Settlement. In connection with the proposed certification of the Class, the Parties shall cooperate and present to the Court for its consideration competent evidence, as may be requested by the Court, under the applicable due-process requirements and standards for class certification. In the event that either preliminary or final approval of the Settlement is not obtained or, if obtained, is reversed upon appeal, the Parties shall be returned to their respective positions in the action as they existed as of the filing of the Complaint. Furthermore, nothing said or represented in connection with obtaining approval by the Court with respect to this Settlement, either on a preliminary or final basis, shall be admissible for any purpose other than to obtain approval by the Court of this Settlement and to interpret or enforce the terms of this Agreement.

50. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this

Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement.

51. Defendant understands that, in the course of applying for Court approval of the Settlement, the Class Representative will be required to submit sufficient evidence to support the fairness of the Settlement. Defendant affirmatively agrees to assist and support the Class Representative in providing such evidence and, if requested by the Class Representative, will provide declaration(s) or other admissible evidence reflecting the number of Class Members, their compensation information, and the number of Workweeks that they worked during the Settlement Period.

52. The Parties agree that neither they nor their respective counsel will solicit or otherwise encourage, directly or indirectly, Class Members to request exclusion from the Settlement, object to the Settlement, or appeal the Court's order granting final approval of the Settlement and judgment based thereon. Class Counsel shall not represent any Settlement Class Members with respect to any such objections.

### **EFFECTUATION OF SETTLEMENT**

53. Calculation of Individual Settlement Shares: Settlement Class Members' respective Individual Settlement Shares will be calculated by the Settlement Administrator based on their respective number of Workweeks. Each Settlement Class Member shall be entitled to a percentage share of the Net Settlement Amount, calculated by dividing the number of Workweeks worked by the Settlement Class Member by the aggregate number of Workweeks worked by all Settlement Class Members, and multiplying the resulting percentage by the value of the Net Settlement Amount. Each Settlement Class Member's Workweeks will be determined by reference to Defendant's records, subject to the dispute process described above in sections 42 through 44 of this Agreement.

54. Disbursement of Individual Settlement Shares: Individual Settlement Shares will be distributed by the Settlement Administrator to Settlement Class Members within fifteen (15) business days after all three Gross Settlement Amount installment payments have been made. The Settlement Administrator shall mail the Individual Settlement Shares to Settlement Class Members via first-class mail.

55. Disbursement of Attorneys' Fees and Costs: Class Counsel's attorneys' fees and costs, as approved by the Court, will be distributed by the Settlement Administrator to Class Counsel within ten (10) business days after all three Gross Settlement Amount installment payments have been made. The Settlement Administrator shall distribute Class Counsel's attorneys' fees and costs to Class Counsel by wire transfer. Class Counsel's attorneys' fees and costs shall be reported on an IRS Form 1099.

56. Disbursement of Service Award: The Class Representative's Service Award, as

approved by the Court, will be distributed by the Settlement Administrator to Class Counsel within ten (10) business days after all three Gross Settlement Amount installment payments have been made. The Service Award shall be reported on an IRS Form 1099.

57. Disbursement of the LWDA's Share of the PAGA Payment: The LWDA's share of the PAGA Payment, as approved by the Court, will be distributed by the Settlement Administrator to the LWDA within fifteen (15) business days after all three Gross Settlement Amount installment payments have been made.

58. Uncashed Checks: All Individual Settlement Share checks not cashed within 180 calendar days of mailing shall be paid to a mutually agreeable *cy pres* recipient, in accordance with section 384 of the California Code of Civil Procedure.

59. Disbursement of Settlement-Administration Expenses: The Settlement Administrator's Settlement-Administration Expenses, as approved by the Court, shall be paid from the Gross Settlement Fund upon completion of all duties required to be performed by the Settlement Administrator under the terms of this Agreement, or as otherwise required by the Court.

### **MISCELLANEOUS PROVISIONS**

60. Not Void Due to Change in Law: The Parties may not void this Agreement because of changes in the law or results of litigation in other cases.

61. No Admission of Liability: It is understood and agreed by Plaintiff that this Agreement represents a compromise and settlement of the Action, and that the promises, payments, and consideration of this Agreement shall not be construed to be an admission of any liability or obligation by the Released Parties. Plaintiff further agrees that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative proceeding, court proceeding, or legal proceeding (other than to enforce the terms of this Agreement or as required by a valid court order). Defendant disclaims and denies any liability, obligation, or responsibility to Plaintiff whatsoever.

62. No Publicity: The Parties and their respective counsel agree that they will not issue any press release, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about this case or the fact, amount, or terms of this Settlement. In addition, the Parties and their respective counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement, including, but not limited to, any postings on any website maintained by Class Counsel. Any communication about the Settlement to Class Members (other than Plaintiff) prior to preliminary approval of the Settlement will be limited to a statement that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved Notice. Nothing in the Settlement Agreement shall restrict Class Counsel from disclosing and including all publicly available information regarding this case and the Settlement in any documents filed with any court or in any judicial submission (*e.g.*, CVs, declarations regarding adequacy or experience, *etc.*).

63. Confidentiality: Until a motion for preliminary approval of the Settlement is filed, the negotiations, terms, and existence of this Settlement Agreement will remain strictly confidential and shall not be discussed with anyone other than the Parties of record, counsel of record, their respective retained consultants, and the Mediator. Any confidentiality associated with the terms of this Settlement shall expire upon the filing of a motion for preliminary approval of the Settlement, except the negotiations and discussions prior to entering into this Settlement Agreement shall remain strictly confidential unless otherwise ordered by the Court or necessary to obtain Court approval of the Settlement. Defendant may disclose the Settlement in filings that it is required to make by law, including, but not limited to, filings with the Securities and Exchange Commission, including 10-Q and 10-K filings, as applicable.

64. Acknowledgment: The Parties acknowledge that there is a genuine dispute as to the claims alleged in the Complaint. Plaintiff further acknowledges that, were it not for this Agreement, she would not necessarily be entitled to receive compensation from Defendant.

65. Attorneys' Fees and Costs: Other than the attorneys' fees and costs provided for in the Settlement Agreement, the Parties agree that they will bear their own attorneys' fees and costs incurred in connection with the matters pled in the Complaint. The Parties acknowledge that they will satisfy any obligation owed to, or liens asserted by, any counsel they have consulted or retained.

66. No Additional Recovery: It is the intent of this Settlement Agreement that Plaintiff, lienholders, and any other individual or entity with an interest in the Released Claims with respect to the payment of the Gross Settlement Amount shall not recover, directly or indirectly, any sums from the Released Parties other than the funds received pursuant to this Settlement Agreement.

67. Entire Agreement and Modification of the Settlement: This Settlement Agreement constitutes the entire agreement between the Parties regarding actual or potential claims that could have been asserted by Plaintiff against the Released Parties within the scope of the releases contained herein. This Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the settlement of those claims. No other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid. This Settlement Agreement cannot be orally modified. Any amendment or modification to this Settlement Agreement must be in writing, signed by respective counsel for the Parties, and approved by the Court.

68. No Reliance upon Representations by the Other Side: Plaintiff represents and acknowledges that, in executing this Settlement Agreement, she did not rely, and has not relied, upon any representation or statement made by Defendant or its agents, attorneys, or representatives with regard to the subject matter of this Agreement, or its basis, or the effects of this Settlement Agreement, other than those representations specifically set forth in this written document.

69. Binding Nature; No Assignment: This Settlement Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns, subsidiaries and related entities, and all other entities with whom Plaintiff has been, is now, or may hereafter be affiliated with, and shall inure to the benefit of Plaintiff, her agents, directors, officers,

employees, servants, successors, and assigns. Plaintiff promises and guarantees that she has not made, and will not make, any assignment of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the claims that are released herein, and that no other person or entity of any kind had or has any interest in any of the claims released herein.

70. Construction: This Settlement Agreement is the product of arms' length negotiations and is considered to be jointly drafted. As such, it shall not be construed against any Party because that Party caused it to be reduced to a written instrument.

71. Fairness of Settlement: Plaintiff agrees that this Settlement is fair, reasonable, and adequate.

72. Effect of Illegality: Should any part, term, or provision of this Settlement Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions of this Settlement Agreement shall not be affected thereby. Said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Settlement Agreement.

73. Compliance with Terms; No Waiver: The failure to insist upon compliance with any term, covenant, or condition contained in this Settlement Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power contained in this Settlement Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

74. Enforcement Costs: The Parties agree that, in the event litigation is initiated by either Party concerning a purported breach this Settlement Agreement by Plaintiff or Defendant, the prevailing Party will be entitled to recover its costs and reasonable attorneys' fees incurred in conjunction with that litigation, in addition to any other relief granted.

75. Governing Law and Jurisdiction: This Settlement Agreement shall be interpreted under the laws of the State of California, both as to interpretation and performance.

76. Section Headings: The section and paragraph headings contained in this Settlement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

77. Counterparts; PDF and Facsimile Signatures: This Settlement Agreement may be executed in any number of counterparts, each of which will be deemed to be an executed Settlement Agreement and each of which shall be deemed to be one and the same instrument. A facsimile, electronic, or .PDF signature shall be treated as an original signature for all purposes.

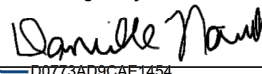
78. Representative Capacity: Each Party executing this Settlement Agreement in a representative capacity represents and warrants that it is empowered to do so.

79. Survival of Warranties and Representations: The warranties and representations of this Settlement Agreement are deemed to survive the date of execution thereof.

80. Voluntary and Knowing: This Settlement Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: 1/7/2021, 2020

DocuSigned by:  
  
D0773AD9CAE1454...  
\_\_\_\_\_  
Danielle Howell

JONBEC CARE, INC.

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

Its: \_\_\_\_\_

**AS TO SECTION 28:**

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Jonathan Joseph

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Becky Joseph

**APPROVED AS TO FORM:**

GREENSTONE LAW APC  
ZELENSKI LAW, PC

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Mark S. Greenstone  
Abigail Zelenski  
David Zelenski  
Attorneys for Plaintiff

Dated: \_\_\_\_\_, 2020

FISHER & PHILLIPS LLP  
  
\_\_\_\_\_  
Colin P. Calvert  
Attorneys for Defendant

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Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Danielle Howell

JONBEC CARE, INC.

Dated: \_\_\_\_\_, 2020

By: \_\_\_\_\_

Its: \_\_\_\_\_

**AS TO SECTION 28:**

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Jonathan Joseph

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Becky Joseph

**APPROVED AS TO FORM:**

GREENSTONE LAW APC  
ZELENSKI LAW, PC

Dated: January 8, 2021, ~~2020~~

*David Zelenski*  
\_\_\_\_\_

Mark S. Greenstone  
Abigail Zelenski  
David Zelenski  
Attorneys for Plaintiff

Dated: \_\_\_\_\_, 2020

FISHER & PHILLIPS LLP

\_\_\_\_\_  
Colin P. Calvert  
Attorneys for Defendant

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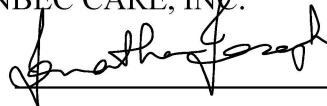
The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Danielle Howell

Dated: January 20, 2021, ~~2020~~

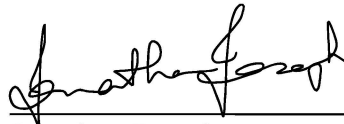
JONBEC CARE, INC.

By:   
\_\_\_\_\_  
President

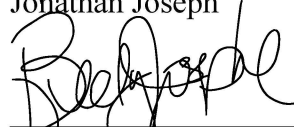
Its: \_\_\_\_\_

**AS TO SECTION 28:**

Dated: January 20, 2021, ~~2020~~

  
\_\_\_\_\_  
Jonathan Joseph

Dated: January 20, 2021, ~~2020~~

  
\_\_\_\_\_  
Becky Joseph

**APPROVED AS TO FORM:**

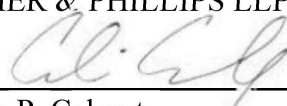
GREENSTONE LAW APC  
ZELENSKI LAW, PC

Dated: \_\_\_\_\_, 2020

\_\_\_\_\_  
Mark S. Greenstone  
Abigail Zelenski  
David Zelenski  
Attorneys for Plaintiff

Dated: January 20, 2021, ~~2020~~

FISHER & PHILLIPS LLP

  
\_\_\_\_\_  
Colin P. Calvert  
Attorneys for Defendant