

# **CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT**

## **AND RELEASE**

This Class and Representative Action Settlement Agreement and Release (“Agreement”) encompasses two (2) separately filed actions, *Crandall, et al. v. Maxim Healthcare Services, Inc.* (Orange County Superior Court, Case No. 30-2017-00940239-CU-OE-CXC) (“Crandall Matter”); and *Fuentes, et al. v. Maxim Healthcare Services, Inc.* (C.D. Cal. Case No. 2:17-cv-01072) (“Fuentes Matter”) (collectively the Matters are referred to as “The Lawsuits”).

This Agreement is entered into between Plaintiffs DILCIA CRANDALL, BARBARA COHEN (formerly Tatum), ELIZABETH FUENTES, and MYRNA JOHNSTON (collectively “Plaintiffs” or “Class Representatives”), individually, and on behalf of all others similarly situated, on the one hand, and Defendants MAXIM HEALTHCARE SERVICES, INC. and MAXIM HEALTHCARE STAFFING SERVICES, INC. (“Maxim”) (together “the Parties”), on the other hand.

This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the “Released Claims” (as defined below) on a class and representative action basis pertaining to the “Released Parties” (as defined below) upon and subject to the terms and conditions contained herein. This Agreement, which is contingent upon Final Court approval, contains the terms of the Parties’ agreement. The Plaintiffs and Class Counsel believe, and the Parties have agreed, that the settlement set forth in this Agreement confers substantial benefits upon the

Class Members.

## **I. DEFINITIONS**

### **1. Actions**

“Actions,” “Lawsuits,” or “Matters” mean the civil actions filed by Plaintiffs entitled *Crandall, et al. v. Maxim Healthcare Services, Inc.* (Orange County Superior Court, Case No. 30-2017-00940239-CU-OE-CXC) and *Fuentes, et al. v. Maxim Healthcare Services, Inc.* (C.D. Cal. Case No. 2:17-cv-01072).

### **2. Class Counsel**

“Class Counsel” means Cohelan Khoury & Singer APC; Aegis Law Firm, PC; and the Law Offices of Thomas D. Rutledge, who, subject to Court approval, shall act as counsel for the Settlement Class and PAGA Group.

### **3. Class Counsel Award**

“Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of these Lawsuits, and Class Counsel’s expenses and legal costs incurred in connection with this Lawsuit.

### **4. Class Information**

“Class Information” or “Class Data” means information regarding Settlement Class Members that Defendant will compile from its records and provide to the Settlement Administrator in a Microsoft Excel spreadsheet, including each Settlement Class Member’s full name; last known address; social security number; and the total number of covered workweeks worked by the Class Member as a

Homecare Settlement Class Member and/or as a Wage Statement Settlement Class Member during the Class Period and, if applicable, the number of weeks worked during the defined PAGA Group Period.

**5. Class Members or Settlement Class Members**

“Class Members” or “Settlement Class Members” means all persons who are members of the Homecare Settlement Class or the Wage Statement Settlement Class.

**6. Class Representatives**

“Class Representatives” means Plaintiffs Dilcia Crandall, Barbara Cohen (formerly Tatum), Elizabeth Fuentes, and Myrna Johnston.

**7. Class Representatives’ Enhancement Award**

“Class Representatives’ Enhancement Award” means the Court authorized amount payable to the Plaintiffs, in addition to Plaintiffs’ Individual Settlement Payments, in recognition of Plaintiffs’ efforts and risks in assisting with the prosecution of the Lawsuits and in return for executing a general release with Defendant.

**8. Class Representatives’ Released Claims**

“Class Representatives’ Released Claims” means all known and unknown claims against the Released Parties, including any Released Claims as well as other wage and hour claims, claims under California Business & Professions Code section 17200, claims under the Labor Code, including, but not limited to, claims under the Private Attorneys General Act (“PAGA”), claims under the Fair Labor Standards

Act (“FLSA”), and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, penalties, liquidated damages, and interest, and all other claims under state, federal, and local laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or relating to Class Representatives’ relationship, or termination of relationship, with any Released Party through the date of Final Approval for any type of relief. Class Representatives further covenant that they will not become a member of any other legal actions against the Releasees, as that term is defined, asserting any of Class Representatives’ Released Claims, and will opt out of any such actions if necessary. For the avoidance of doubt, this is a complete and general release to the maximum extent by law.

With respect to Class Representatives’ Released Claims, Class Representatives waive their rights under California Civil Code section 1542 which states:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by**

**him or her, would have materially affected his or her settlement with the debtor or released party.**

**9. Complaint**

“Complaint” means the Fourth Amended Complaint to be filed in the Crandall Action under this Agreement.

**10. Court**

“Court” means the Superior Court of California for the County of Orange.

**11. Defendants**

“Defendants” means Defendants MAXIM HEALTHCARE SERVICES, INC. and MAXIM HEALTHCARE STAFFING SERVICES, INC.

**12. Effective Date**

“Effective Date” means the date on which the Court’s order granting Final Approval of this Settlement Agreement becomes final. Such order becomes final upon the following events: (i) sixty five (65) days after the Court issues the Final Approval Order granting approval of this Settlement Agreement if no objections to the settlement are filed; or (ii) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal’s decision passes and no further review is requested; (iii) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal’s decision is requested, the day after the request for review is denied

with prejudice and/or no further review of the order can be requested; or (iv) if review is accepted, the day after the California Supreme Court affirms the judgment or order approving the Settlement.

**13. Eligible Workweek**

“Eligible Workweek” means any workweek in which a Class Member was employed by Defendants and according to Defendants’ data worked as a Class Member during the applicable Homecare Settlement Class Period or Wage Statement Settlement Class Period.

**14. Final Approval Hearing**

“Final Approval Hearing” means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

**15. Final Judgment**

“Final Judgment” means a judgment issued by the Court approving this Agreement as binding upon the Parties, in a form substantially similar to **Exhibit 1** hereto. The Final Judgment shall constitute a judgment respecting the Parties within the meaning and for purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a), and on the PAGA claims for purposes of enforcing the rule announced in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

**16. Homecare Settlement Class**

“Homecare Settlement Class” means all non-exempt external employees employed by MAXIM HEALTHCARE SERVICES, INC. in the Homecare division in California at any time between October 24, 2013 through April 30, 2020.

**17. Homecare Settlement Class Period**

“Homecare Settlement Class Period” means the period of October 24, 2013 through April 30, 2020.

**18. Individual Settlement Payment**

“Individual Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who timely submits a Request for Exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Settlement Payment. Participating Class Members who are members of the PAGA Group will receive a PAGA Group Payment in addition to the Individual Settlement Payment. Class Members who submit a timely Request for Exclusion and so are ineligible to receive an Individual Settlement Payment will still receive a PAGA Group Payment and will be bound by the PAGA Release if that Class Member is a member of the PAGA Group.

**19. LWDA**

“LWDA” means the California Labor and Workforce Development Agency.

**20. Net Settlement Amount**

“Net Settlement Amount” means the Total Settlement Amount less Court-

approved Class Counsel Award, Class Representatives' Enhancement Award, PAGA Payment, and Settlement Administration Costs. The Net Settlement Amount is the total amount that will be paid to Participating Class Members, in the form of Individual Settlement Payments.

**21. Notice of Class Action Settlement**

“Notice of Class Action Settlement” means the notice approved by the Parties and subject to Court approval, substantially in the form of **Exhibit 2** hereto, explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Settlement Class Member.

**22. PAGA**

“PAGA” refers to the Labor Code Private Attorneys General Act of 2004, Labor Code § 2699 et seq.

**23. PAGA Group**

“PAGA Group” means all members of the Homecare Settlement Class or the Wage Statement Settlement Class described herein who were employed by Defendants in California from June 21, 2016 through April 30, 2020, whether or not such individuals elect to become Participating Class Members under the terms of this Agreement.

**24. PAGA Group Payment**

“PAGA Group Payment” means the payment from the Total Settlement Amount in the amount of \$62,500 to be made to members of the PAGA Group

representing the 25% share of the \$250,000 amount paid for PAGA penalties under the Settlement.

**25. PAGA Payment**

“PAGA Payment” means the payment from the Total Settlement Amount in the amount of \$250,000, of which \$187,500 will be made to the LWDA as its 75% share of the PAGA Payment and the rest will be allocated to the PAGA Group as the PAGA Group Payment for PAGA penalties under the Settlement.

**26. PAGA Group Period**

“PAGA Group Period” means the period of June 21, 2016 through April 30, 2020.

**27. PAGA Release**

“PAGA Release” shall mean any and all claims and/or causes of action for civil penalties and other relief available pursuant to PAGA against Released Parties that were or could have been pled based on any and all of the underlying alleged Labor Code violations pled in the original and amended Complaints and the LWDA notices. These alleged violations include, but are not limited to, violations of Labor Code §§ 201, 201.3, 202, 203, 204, 204b, 210, 216, 226, 226.3, 226.7, 247, 247.5, 432, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 1454, 2800, and 2802. Regardless of whether any Class Members opt out of the Settlement, they will still be bound by the PAGA Release if they are members of the PAGA Group. The period of the PAGA Release will extend up to April 30, 2020.

**28. Participating Class Members**

“Participating Class Members” means those Class Members who do not file a valid and timely Request for Exclusion.

**29. Parties**

“Parties” means Plaintiffs and Defendants, collectively.

**30. Plaintiffs**

“Plaintiffs” means Plaintiffs Dilcia Crandall, Barbara Cohen (formerly Tatum), Elizabeth Fuentes, and Myrna Johnston.

**31. Preliminary Approval Date**

“Preliminary Approval Date” means the date on which the Court issues an order granting preliminary approval of the proposed Settlement.

**32. Qualified Settlement Fund**

“Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator which the Parties agree will at all times be treated as a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1, *et seq.* The Parties agree the Settlement Administrator shall, in establishing the account, make any such elections as necessary or advisable to carry out the “relation back election” (as defined in Treas. Reg. §1.468B-1(j)(2)(i)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary

documentation for signature by all necessary Parties, and to cause the appropriate filing to occur. The Parties further agree and acknowledge that, for purposes of Section 468B of the Internal Revenue Code of 1986, as amended (the “Code”) and the Treasury Regulations promulgated thereunder, only the Defendants shall be treated as a “transferor” (within the meaning of such term under Treasury Regulations §1.468B-1(d)(1)) with respect to the Qualified Settlement Fund.

**33. Released Claims for the Homecare Settlement Class**

“Released Claims for the Homecare Settlement Class” shall mean any and all claims and/or causes of action under any state, local or federal law or administrative order by Homecare Settlement Class Members against Released Parties that were or could have been pled based on the allegations of the original and amended Complaints and the LWDA notices, whether known or unknown, including but not limited to, any claim for: (1) Failure To Pay Regular Pay/Minimum Wages/Other Legally Required Pay; (2) Failure To Pay Overtime or Other Premium Pay; (3) Failure To Provide Meal Periods or Compensation in Lieu Thereof; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof; (5) Failure To Reimburse For Necessary Expenditures; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Maintain Records; (8) Failure to Timely Pay Wages; (9) Unlawful and Deceptive Business Practices in Violation of Business & Professions Code §§ 17200, *et seq.*; (10) any derivative claims under the Fair Labor Standards Act (“FLSA”) or any applicable California Industrial Welfare Commission Wage

Order; (11) related common law claims for conversion, other alleged tortious conduct, breach of contract, and misrepresentation; and (12) any other derivative claims under California law including claims for statutory or civil penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The "Released Claims for the Homecare Settlement Class" also includes a release of any and all claims covered by the PAGA Release. Regardless of whether any Class Members opt out of the Settlement, they will still be bound by the PAGA Release. The period of the Released Claims for the Homecare Settlement Class will extend up to April 30, 2020.

**34. Released Claims for the Wage Statement Settlement Class**

"Released Claims for the Wage Statement Settlement Class" shall mean any and all claims and/or causes of action under any California law or administrative order by Wage Statement Settlement Class Members against Released Parties that were or could have been pled based on the allegations of the original and amended Complaints and the LWDA notices, whether known or unknown, relating to their wage statements including but not limited to, any claim for Failure to Provide Accurate Itemized Wage Statements and Failure to Maintain Records in Violation of Labor Code §§ 226, 247.5, and 1174; and any other derivative claims under California law including claims for statutory or civil penalties, actual damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, and

equitable and declaratory relief. The “Released Claims for the Wage Statement Settlement Class” also includes a release of any and all wage statement claims covered by the PAGA Release. Regardless of whether any Class Members opt out of the Settlement, they will still be bound by the PAGA Release. The period of the Released Claims for the Wage Statement Settlement Class will extend up to April 30, 2020.

**35. Released Parties**

“Released Parties” or “Releasees” means Defendants and all affiliated parties and entities and any other persons acting in concert with Defendants, including any of its past, present, or future parents, associates, owners, stockholders, control persons, boards, board members, affiliates, divisions, subsidiaries, related entities, joint employers, directors, officers, agents and employees, insurers, representatives and lawyers, and each of their respective predecessors, successors, heirs and assigns, and Defendants’ employee welfare benefit plans and pension or deferred compensation plans under Section 401 of the Internal Revenue Code of 1954, as amended, and their trustees, administrators and other fiduciaries, and all persons acting by, through, under or in concert with them, or any of them.

**36. Request for Exclusion**

“Request for Exclusion” means a timely submitted request for exclusion from the Settlement using the form attached hereto as Exhibit 4, or a letter with substantially the same information. However, such Class Members will still be

bound by the terms of the PAGA Release if they are members of the PAGA Group. Specific details of how to submit a “Request for Exclusion” will be provided by the Class Notice.

**37. Response Deadline**

“Response Deadline” means the date sixty (60) days after the Settlement Administrator mails the Notice of Class Action Settlement to Settlement Class Members, which is the last date on which Settlement Class Members may: (a) submit a Request for Exclusion; (b) submit objections to the settlement; or (c) dispute the information contained in the Notice of Class Action Settlement.

**38. Settlement**

“Settlement” or “Settlement Agreement” means this Class and Representative Action Settlement Agreement and Release.

**39. Settlement Administrator**

“Settlement Administrator” means Phoenix Class Action Administration Solutions, the third-party Settlement Administrator mutually agreed to by the Parties and appointed by the Court upon Class Counsel’s motion for preliminary approval of this Settlement.

**40. Settlement Administrator Costs**

“Settlement Administrator Costs” means the amount to be paid to the Settlement Administrator from the Total Settlement Amount for administration of this Settlement. References herein to actions and responsibilities of the Settlement

Administrator shall be to those actions and responsibilities it shall take as set forth in the Agreement.

**41. Total Settlement Amount**

“Total Settlement Amount” means the total maximum amount payable under the terms of this Agreement by Defendants, which is the gross sum of \$5,500,000, and includes, without limitation: the Individual Settlement Payments to Participating Class Members; payment of Settlement Administration Costs as approved by the Court; any Class Representatives’ Enhancement Awards to Plaintiffs Dilcia Crandall, Barbara Cohen (formerly Tatum), Elizabeth Fuentes, and Myrna Johnston as approved by the Court; a payment to Class Counsel of attorneys’ fees and reasonable litigation costs which shall be determined by motion with the Court; the PAGA Group Payment; and the PAGA Payment to the LWDA. Payment of the amount necessary to cover the employer’s portion of payroll taxes associated with the 33% portion of the Individual Settlement Payments allocated to wages shall be made by Defendants, separate and apart from the Total Settlement Amount. The Settlement Administrator will make all required tax deductions and payments using a Qualified Settlement Fund. As set forth herein, the Settlement Administrator will issue all the above-referenced payments from the Qualified Settlement Fund in accordance with the applicable provisions of this Stipulation.

**42. Wage Statement Settlement Class**

“Wage Statement Settlement Class” means all non-exempt external employees employed by Defendants in the Homecare and/or Staffing divisions in California at any time between June 21, 2016 through April 30, 2020.

**43. Wage Statement Settlement Class Period**

“Wage Statement Settlement Class Period” means the period of June 21, 2016 through April 30, 2020.

**II. RECITALS**

**1. Class Certification.**

The Parties are agreeing to class certification for settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an admission of any kind by Defendants, including without limitation, that certification of a class for trial or any other non-settlement purpose is appropriate or proper or that if the matter was litigated Plaintiffs could prove the requisite elements for class treatment of any of the claims in this Action.

If, for any reason, the Settlement is not approved, this Agreement will be void and the Parties will be restored to their respective positions as if they had not entered into this Agreement. The Parties further agree that this Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class action should be certified, or that this matter may proceed as a representative action; or (ii) Defendants are liable to Plaintiffs or any Settlement Class Member, other than according to the Settlement’s terms. In the event that the Settlement is not approved

or otherwise voided, Defendants expressly reserve all rights to challenge certification of a class, or Plaintiffs' ability to maintain a representative action, for all purposes in the Action.

**2. Arbitration.**

This Settlement Agreement shall not supersede any arbitration agreements and/or release agreements applicable to a Class Member, except that Class Members can be Participating Class Members notwithstanding any arbitration agreement. Defendants reserve the ability to compel arbitration as to Class Members subject to an enforceable arbitration agreement should the Settlement not be finally approved, and as to any claims not released by the Settlement.

**3. Procedural History.**

On October 24, 2017, Plaintiff Fuentes filed a putative class action and PAGA representative action complaint. The case is currently pending in the Central District of California before Judge André Birotte. Plaintiff Fuentes worked in Defendant Maxim Healthcare Services, Inc.'s Homecare division. On May 23, 2018, Plaintiff Fuentes filed an amended complaint adding Plaintiff Johnston as a named plaintiff. Johnston is a currently active employee in Defendant Maxim Healthcare Services, Inc.'s Homecare division. Plaintiffs Fuentes and Johnston are seeking to represent a putative class of current and former non-exempt external employees who worked in California in the Homecare division since October 24, 2013. The Seventh Amended Complaint alleges the following putative class claims under the California

Labor Code: (1) failure to pay minimum wage; (2) failure to pay overtime; (3) failure to provide meal and rest breaks; (4) failure to timely pay all wages owed at separation of employment; (5) failure to provide accurate wage statements; and (6) a derivative claim under California's Unfair Competition Law. Plaintiffs Fuentes and Johnston also assert a representative claim under PAGA seeking to collect civil penalties for the above violations.

On August 25, 2017, Plaintiff Crandall filed her PAGA-only action in Orange County Superior Court. Plaintiff Crandall worked in Defendant Maxim Healthcare Services, Inc.'s Homecare division and is seeking to represent all non-exempt external employees in the Homecare and Staffing divisions, including any such individuals employed by Defendant Maxim Healthcare Staffing Services, Inc. On March 8, 2019, Plaintiff Crandall filed a Second Amended Complaint adding Plaintiff Cohen as a named plaintiff. Plaintiff Cohen also worked in Defendant Maxim Healthcare Services, Inc.'s Homecare division. The Second Amended Complaint seeks to recover civil penalties for the following alleged Labor Code violations: (1) failure to pay minimum wage; (2) failure to pay overtime; (3) failure to pay overtime to domestic workers; (4) failure to provide uninterrupted meal and rest breaks; (5) failure to reimburse for business expenses; (6) failure to provide accurate wage statements; and (7) a derivative claim for failure to timely pay all wages owed at separation.

On October 31, 2019, all Parties attended an all day mediation with Tripper

S. Ortman, Esq. In conjunction with the mediation, the Parties agreed that given the differences between certain employment conditions of Homecare and Staffing employees, the Staffing employee claims to be mediated would be limited to wage statement claims. Although the Parties did not reach an agreement at the mediation, the exchange of information, the ongoing assistance of Mr. Ortman, and arms-length settlement negotiations between counsel for the Parties resulted in this Settlement.

Before the mediation, Defendants produced extensive documentation including time and pay data, policy documents, class size information, and contact information for a sample of employees. Additionally, counsel in the Crandall Matter took depositions of several corporate representatives of Defendants, which covered issues that were also relevant to the Fuentes Matter. After the mediation, Defendants provided additional relevant information to Plaintiffs that assisted in their evaluation of the claims, including as to arbitration agreements for Class Members. In short, Defendants provided formal and informal discovery sufficient to enable the Class Representatives and Class Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case.

Defendants deny any liability or wrongdoing of any kind associated with the claims asserted in the Actions, dispute the damages and penalties claimed by Plaintiffs, and further contend that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative treatment. This Settlement is a

compromise of disputed claims. Nothing contained in this Settlement, no documents referred to herein, and no action taken to carry out this Settlement, shall be construed or used as an admission by or against Defendants as to the merits or lack thereof of the claims asserted in the Actions. Defendants contend, among other things, that, at all times, they have complied with all relevant legal requirements related to the Settlement Class Members' employment. Defendants also contend that many Class Members have waived their right to pursue class claims in arbitration agreements. Nevertheless, Defendants have entered into this Settlement to avoid the cost, risk and inconvenience of further litigation. Nothing contained in this Settlement, nor the fact of this Settlement itself, shall be construed or deemed as an admission of liability, or wrongdoing on the part of Defendants, or an admission that class or representative action treatment would be allowed outside the settlement context. Pursuant to California Evidence Code sections 1152 and 1154, this Settlement shall be inadmissible in evidence in any proceeding; except that the Settlement may be filed and used in this litigation or any related litigation as necessary to approve, interpret, or enforce this Settlement, or in any subsequent action against or by Defendants to support a stay of such subsequent action, or to establish a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

The Class Representatives are represented by Class Counsel. Class Counsel

investigated the facts relevant to the Lawsuit, including reviewing documents and information provided by Defendants. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendants is fair, reasonable and adequate, and in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendants, uncertainties regarding a class trial, and numerous potential appellate issues. Although Defendants deny any liability, Defendants are agreeing to this Settlement to avoid the cost, distraction, and risks of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Actions on the terms set forth herein.

**4. Benefits of Settlement to Class Members.**

Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiffs have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in litigation. Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Actions, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing damages for the Settlement Class Members. Plaintiffs and Class Counsel have considered Defendants' agreement to enter into a settlement that confers substantial

relief upon the members of the Settlement Class. Based on the foregoing, Class Counsel have concluded that settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and adequate and is in the best interest of the putative class in light of all known facts and circumstances, including the risk of delay, defenses asserted by Defendants, numerous potential appellate issues, and other risks inherent in litigation.

**5. Defendants' Reasons for Settlement.**

Defendants have concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendants' time, energy, and resources have been and, unless this Settlement is completed, will continue to be devoted to, the defense of the claims asserted by Plaintiffs and Settlement Class Members. Defendants have also taken into account the risks of further litigation in reaching the decision to enter into this Settlement. Even though Defendants continue to contend that they are not liable for any of the claims set forth by Plaintiffs in the Actions, Defendants have agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in the Actions. Defendants contend that they have complied with all applicable state, federal, and local laws.

**6. Settlement of Disputed Claims.**

This Agreement is a compromise of disputed claims. Defendants have claimed and continue to claim that the Released Claims have no merit and do not

give rise to liability. Settlement Class Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendants. Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry out this Agreement, may be construed or used as an admission by or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the claims asserted in this Lawsuit.

### **III. TERMS OF AGREEMENT**

#### **1. Release as To All Participating Class Members.**

A. As of the Effective Date, the Participating Class Members in the Homecare Settlement Class release the Released Parties from the “Released Claims for the Homecare Settlement Class.” The Released Claims for the Homecare Settlement Class shall not be limited in any way by the possibility that Participating Class Members may discover or assert new facts, legal theories, or legal arguments not alleged in the to-be-filed Complaint, but which may serve as an alternative basis for pursuing the same claims, causes of action, penalties, or legal theories of relief falling within the definition of Released Claims for the Homecare Settlement Class. To the extent that any Participating Class Member has previously released any claims against the Released Parties, this release does not cancel, modify or alter that prior release, which will remain in full force and effect.

B. As of the Effective Date, the Participating Class Members in the Wage Statement Settlement Class release the Released Parties from the “Released Claims

for the Wage Statement Settlement Class.” The Released Claims for the Wage Statement Settlement Class shall not be limited in any way by the possibility that Participating Class Members may discover or assert new facts, legal theories, or legal arguments not alleged in the to-be-filed Complaint, but which may serve as an alternative basis for pursuing the same claims, causes of action, penalties, or legal theories of relief falling within the definition of Released Claims for the Wage Statement Settlement Class. To the extent that any Participating Class Member has previously released any claims against the Released Parties, this release does not cancel, modify or alter that prior release, which will remain in full force and effect.

**2. Release as To the PAGA Group.**

As of the Effective Date, all individuals in the PAGA Group release the Released Parties from any and all claims covered by the PAGA Release. Regardless of whether any individuals in the PAGA Group opt out of the Homecare Settlement Class or the Wage Statement Settlement Class, they will still remain in the PAGA Group and be bound by the PAGA Release.

**3. Release as To the Named Plaintiffs.**

Plaintiffs release the Released Parties from all of the Class Representatives’ Released Claims. Plaintiffs’ releases set forth herein include a waiver of all rights under California Civil Code §1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES NOT**

**KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Plaintiffs expressly agree to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with Defendants.

**4. Tax Treatment.**

All individual Settlement Payments to members of the Homecare Settlement Class shall be allocated as follows: 33% wages and expenses and 67% penalties and interest. All individual Settlement Payments to members of the Wage Statement Settlement Class and all PAGA Group Payments shall be treated as non-wage payments for alleged penalties and shall not be subject to any withholdings or deductions. The 33% wages and expenses portion of Settlement Payments to the Homecare Settlement Class subject to required withholdings and deductions by the Settlement Administrator shall be reported on Form W-2 (and such other state or

local tax reporting forms as may be required by law) with respect to the year of payment as wage income to the Homecare Settlement Class Member by the Settlement Administrator on behalf of the Qualified Settlement Fund. The Settlement Administrator shall issue I.R.S. Form 1099 if required for the remaining payments. Defendant Maxim Healthcare Services, Inc. shall pay the employer's share of payroll taxes on the amounts to Homecare Settlement Class Members allocated as wages and expenses, in addition to the Total Settlement Amount, as set forth below. Plaintiffs and any Class Member who receives any Individual Settlement Payment or PAGA Group Payment should consult with their tax advisors concerning the tax consequences of the Payments they receive under the Settlement.

**5. Circular 230 Disclaimer.**

Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered

into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

**6. Amendment of Crandall Complaint.**

In order to effectuate the settlement of these Actions and for purposes of this Settlement only, the Parties will cooperate in jointly seeking a stay if necessary in the Fuentes Action and will request leave from the Crandall Court for Plaintiffs to file a Fourth Amended Complaint in the Crandall Action (attached hereto as **Exhibit 3**), which will add Fuentes and Johnston as named Plaintiffs and will add class claims to the Crandall Action consistent with the scope of the Homecare Settlement Class and Released Claims and the Wage Statement Settlement Class and Released Claims. If the Settlement is finally approved, Plaintiffs' Counsel will promptly dismiss the Fuentes Action with prejudice. Defendants will not be required to respond to the Fourth Amended Complaint in the Crandall Action. If the Court does not approve this Settlement or there is no Final Judgment, the Third

and Fourth Amended Complaints will be withdrawn and will be replaced with the Second Amended Complaint and the Fuentes Parties will ask the Fuentes Court to lift the stay, such that the Parties will return to the status quo before the Settlement.

**7. Preliminary Approval of Settlement.**

Plaintiffs will move the Court to grant preliminary approval of this Settlement, certifying the Settlement Class for settlement purposes only and setting a date for a final approval hearing. Class Counsel shall be responsible for preparing the Motion for Preliminary Approval, supporting declarations, and exhibits thereto, for preliminary approval by the Court. Plaintiffs shall obtain a hearing on a date agreed upon by all counsel, before the Court to request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval Order: (i) preliminarily approving the proposed Settlement; (ii) allowing the filing of the proposed Fourth Amended Complaint; and (iii) setting a date for Final Approval. Class Counsel agrees to provide Counsel for Defendants with drafts of the Motion for Preliminary Approval and any other documents they intend to submit in support of their Motion for Preliminary Approval in advance of the filing of such documents at least seven days before filing to allow Counsel for Defendants a reasonable time to review and comment on such papers and further agrees to reasonably incorporate the comments from Counsel for Defendants. In support of the Preliminary Approval motion, Defendants agree to inform Plaintiffs in advance of their filing a Preliminary Approval motion whether there are any related actions with overlapping classes or

aggrieved employee groups pending. If the Court requires any declarations or representations as part of the preliminary approval process, the applicable Party will provide that information, including by declaration if required. All Parties agree to work diligently and cooperatively to have this Settlement presented to the Court for preliminary approval.

**8. Settlement Administrator.**

Within thirty 30 days of the Court granting Preliminary Approval of this Agreement, Defendants shall provide the Settlement Administrator with the Class Information for purposes of mailing the Notice of Class Action Settlement to the Settlement Class Members. The Settlement Administrator shall maintain the Class Information as private and confidential and shall not disclose such data to any persons or entities other than Counsel for Defendants, except that relevant information can be provided to Class Counsel if necessary for Class Counsel to respond to inquiries or requests from Class Members. The Class Information is being supplied solely for purposes of the administration of the Settlement set forth in this Stipulation and cannot be used by the Settlement Administrator or Class Counsel for any other purpose. The Parties agree that the Class Information will not be used to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against Defendants and will only be used to administer the Settlement under the terms provided herein.

No later than three (3) days after receipt of the Class Information, the Settlement Administrator shall notify counsel for the Parties that the list has been received and state the number of Settlement Class Members on the list.

a. Notice by First Class U.S. Mail.

Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within fourteen (14) days of receipt of Class Information from Defendants, the Settlement Administrator will mail copies of the Notice of Class Action Settlement to all Settlement Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Settlement Class Member, including performing a skip-trace to identify any updated addresses. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member. The form of the proposed Notice of Class Action Settlement will be agreed to by the parties, and subject to Court approval and modification as necessary to fulfill the Parties' desire to resolve the case.

b. Undeliverable Notices.

Any Notice of Class Action Settlement returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is

affixed, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the Settlement Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable. Settlement Class Members who receive a re-mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty (20) days from the original Response Deadline.

c. Disputes Regarding Individual Settlement Payments or PAGA Group Payments.

Settlement Class Members who disagree with the number of Homecare, Wage Statement, and/or PAGA Group work weeks stated on their Notice of Class Action Settlement derived from the Class Information may provide documentation and/or an explanation to show contrary information by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine a Class Member's eligibility for, and the amounts of, any Individual Settlement Payment or PAGA Group Payment under the terms of this Agreement. Any bona fide dispute with the Settlement Administrator's calculations which cannot be resolved by the Settlement Administrator must be submitted to this Court for final resolution.

d. Disputes Regarding Administration of Settlement.

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to attempt to resolve the dispute without involving the Court.

e. Exclusions.

The Notice of Class Action Settlement shall state that Settlement Class Members who wish to exclude themselves from the Settlement Class must submit a completed Request for Exclusion Form or letter with substantially the same information as the Form by the Response Deadline. The Request for Exclusion must: (1) contain the name and address of the Settlement Class Member requesting exclusion; (2) contain a statement expressing that the Settlement Class Member elects to be excluded from the non-PAGA Class Settlement (such language is included in the form); (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any Individual Settlement Payment under the Settlement and will not be bound by the terms of the Settlement or have any right to object to or appeal the settlement except

that Class Members who are members of the PAGA Group will still receive a PAGA Group Payment and will still be bound by the PAGA Release. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Action.

No later than seven (7) days after the Response Deadline, the Settlement Administrator will provide counsel for the Parties with a complete list of all members of the Settlement Class who have timely submitted a Request for Exclusion.

f. Objections.

The Notice of Class Action Settlement shall state that Settlement Class Members who wish to object to the Settlement may do so in person at the Final Approval Hearing and/or in writing with the option to use the Objection Form attached hereto as **Exhibit 5**. Any written objection (“Notice of Objection”) must be mailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of Objection was timely received. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name and address of the objecting Settlement Class Member; (2) the basis for the objection; and (3) whether the Settlement Class Member intends to appear at the final approval hearing. However, all objections, including all communications which appear at all to object

to the settlement, regardless of formality and regardless of whether anyone believes such objections to be defective, will be filed with the Court by Class Counsel. Objections are valid through the final hearing and are not waived if submitted after the opt-out period closes. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator before the Final Approval hearing is filed with the Court. Any of the Parties may file a response to any objection before the Final Approval Hearing. Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

**9. No Solicitation of Settlement Objections or Exclusions.**

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit either written objections to the Settlement or Requests for Exclusion, or to appeal from the Court's Final Judgment.

**10. Funding of the Qualified Settlement Fund.**

No later than seven (7) calendar days after the Effective Date, the Settlement Administrator shall send Defendants' Counsel electronic wiring instructions for paying the Total Settlement Amount (\$5,500,000) into the QSF. The Settlement Administrator will also inform Defendants of the amount to be sent to the QSF to

pay for the employer's share of payroll taxes as to the Homecare Class Settlement Payments. No later than fourteen (14) days after the Effective Date, Defendants shall fund the QSF.

**11. Net Settlement Amount.**

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representatives' Enhancement Awards, PAGA Group Payment, PAGA Payment to the LWDA, and Settlement Administrator Costs from the Total Settlement Amount. The anticipated Net Settlement Amount is \$3,340,864.17. The Parties estimate the amount of the Net Settlement Amount to be calculated as follows:

|  |                          |
|--|--------------------------|
| Total Settlement Amount:                   | \$5,500,000.00           |
| Requested Class Rep.<br>Enhancement Award: | \$60,000 (\$15,000 each) |
| Requested Class Counsel Fees:              | \$1,833,333.33           |
| Requested Class Counsel Costs:             | \$140,000.00             |
| PAGA Payment to LWDA:                      | \$187,500.00             |
| PAGA Group Payment:                        | \$62,500.00              |

|                                 |                       |
|---------------------------------|-----------------------|
| Settlement Administrator Costs: | \$120,000.00          |
| <b>Net Settlement Amount</b>    | <b>\$3,096,666.67</b> |

This is a non-reversionary Settlement in which Defendants will pay the entire Total Settlement Amount. The employer's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to Defendant Maxim Healthcare Services, Inc.'s FICA and FUTA contributions, if applicable, shall be paid separately from, and in addition to, the Total Settlement Amount.

a. Individual Settlement Payments.

The Net Settlement Amount shall be used to pay Individual Settlement Payments to Participating Class Members in accordance with the terms of this Agreement. The Settlement Administrator will allocate the Individual Settlement Payments to the Participating Class Members in accordance with each Participating Class Member's pro rata share of workweeks during the period applicable to the Homecare Settlement Class and Wage Statement Settlement Class. Participating Class Members in the Homecare Settlement Class will be allocated 80% of the Net Settlement Amount and 20% of the Net Settlement Amount will be allocated to Participating Class Members of the Wage Statement Settlement Class. Each Participating Class Member's total workweeks in the Homecare Settlement Class period will be divided by the total workweeks for all

Participating Class Members in the Homecare Settlement Class, then multiplied by 80% of the Net Settlement Amount. Each Participating Class Member's total workweeks in the Wage Statement Settlement Class period will be divided by the total workweeks for all Participating Class Members in the Wage Statement Settlement Class, then multiplied by 20% of the Net Settlement Amount. 100% of the Net Settlement Amount will be distributed to Participating Class Members.

The Settlement Administrator will report each payment made from the Qualified Settlement Fund to state and federal government authorities, including the Internal Revenue Service, to the extent required by law.

Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address within fifteen (15) days after Defendants fully fund the settlement.

## **12. PAGA Group Payments**

The Settlement Administrator will allocate the PAGA Group Payment to members of the PAGA Group based on the number of workweeks each member of the PAGA Group worked during the defined PAGA Group Period. Those workweeks will be divided by the total number of workweeks for all members of the PAGA Group, then multiplied by the total PAGA Group Payment to determine allocations to individual members of the PAGA Group. The Settlement Administrator shall issue I.R.S. Form 1099 if required for these payments. For Participating Class Members, PAGA Group payments that are to be paid because

the Participating Class Member is a member of the PAGA Group will be paid in one lump sum check with any Individual Settlement Payment.

PAGA Group Payments shall be mailed by regular First-Class U.S. Mail to each PAGA Group Member's last known mailing address at the same time as the Individual Settlement Payments.

**13. Unclaimed Settlement Payment(s).**

After one hundred and eighty (180) days of the mailing of the Individual Settlement Payment checks and the PAGA Group Payment checks, funds attributable to unclaimed, undeliverable, or expired checks ("Unclaimed Settlement Payments") shall expire. Within 30 days of the expiration date, the Unclaimed Settlement Payments shall be deposited to the State of California Unclaimed Property Fund in the name of each Settlement Class Member and/or member of the PAGA Group who did not cash his or her Individual Settlement Payment and/or PAGA Group Payment check.

**14. Class Representatives' Enhancement Awards.**

Defendants agree not to oppose or object to Plaintiffs' application to the Court for Class Representatives' Enhancement Awards of up to \$15,000 each. The Class Representatives' Enhancement Awards shall be paid to Plaintiffs from the Total Settlement Amount no later than fifteen (15) days after Defendants fully fund the settlement. The Class Representatives' Enhancement Awards shall be in addition to the Plaintiffs' Individual Settlement Payments as Settlement Class Members. Any

amount requested by Plaintiffs for the Class Representatives' Enhancement Awards and not granted by the Court shall be added to the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.

**15. Class Counsel Award.**

Defendants agree not to oppose or object to any application or motion by Class Counsel for attorneys' fees in the amount of up to one-third of the Total Settlement Amount. Defendants further agree not to oppose any application or motion by Class Counsel for the reimbursement of reasonable litigation costs and expenses associated with Class Counsel's prosecution of this matter, to be paid from the Total Settlement Amount, not to exceed \$140,000. Class Counsel shall be paid the Class Counsel Award no later than fifteen (15) days after Defendants fully funds the settlement. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Fund and be distributed to Participating Class Members as provided in this Agreement. Class Counsel, all, one, or some, may elect to have the Settlement Administrator, directly or indirectly, disperse all or part of his attorneys' fees award paid to him/her in periodic payments, through a structured settlement. Class Counsel will bear any and all costs, fees, and expenses of administration for any periodic payments of such award and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic

payments, including without limitation, any such issues, claims, and/or disputes brought by the state or federal government concerning the payment of taxes thereon. Class Counsel shall indemnify, defend, and hold Defendants harmless for any and all taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments. To the extent the Court approves any award for attorneys' fees that does not equal one-third of the Total Settlement Amount, Class Counsel retains the right to appeal the Court's award. Should Class Counsel appeal the Court's award, the difference between the amount awarded and the amount disputed on appeal shall be retained by the Settlement Administrator pending Class Counsel's appeal. If Class Counsel's appeal is unsuccessful, any funds not awarded to Class Counsel in possession of the Settlement Administrator will be added to the Net Settlement Fund for distribution to Settlement Class Members by the Settlement Administrator on a proportional basis relative to the size of their Settlement Shares, in accordance with other administration and distribution requirements hereunder, and the particular law firm(s) who initiates such an appeal shall pay any additional costs incurred by the Settlement Administrator for this purpose. The Parties agree that the Court's approval of any request for attorneys' fees and costs is not a condition of the Settlement Agreement and that an award of less than the amounts requested would not give rise to a basis for Plaintiffs or their counsel to abrogate the Settlement Agreement.

**16. Settlement Administrator Costs.**

The Parties agree to allocate up to \$120,000.00 of the Total Settlement Amount for Settlement Administrator Costs. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to Settlement Class Members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement. The Settlement Administrator shall be paid the Settlement Administrator Costs no later than fifteen (15) days after Defendants fully fund the settlement.

In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment or any other appellate review, shall be paid to the Settlement Administrator by Defendants within thirty (30) days of said notification.

a. Responsibilities of the Settlement Administrator.

In addition to establishing the Qualified Settlement Fund, the Settlement Administrator shall be responsible for the following: creating a plan of settlement administration and settlement fund distribution; using the data provided by

Defendants to calculate each Class Member's approximate Individual Settlement Payment; using the data provided by Defendants to calculate each PAGA Group member's PAGA Group Payment; ascertaining the identity and whereabouts of the Class Members and mailing the Class Notice out to them; communicating with Class Members as necessary; printing and mailing the Notice of Class Action Settlement and tax forms to the Participating Class Members and PAGA Group Members as directed by the Court; receiving and reporting requests for exclusion and objections; processing and mailing payments to Plaintiffs, Class Counsel, members of the PAGA Group, and Participating Class Members; notifying the Parties of, and resolving any disputes regarding, the calculation of Class Members' Individual Settlement Amounts; calculating and paying the employer's share of taxes due, through the QSF; complying with all tax reporting notice and filing requirements; carrying out all other duties related to the Qualified Settlement Fund's documentation and filing; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; providing status reports as needed, among other administrative duties; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

**17. Payment to the LWDA.**

A total amount of \$250,000 from the Total Settlement Amount will be

allocated as the PAGA Payment for penalties under PAGA. Seventy-five percent (75%) of this amount will be the PAGA Payment to LWDA and the remaining twenty-five (25%) will be the PAGA Group Payment. Any portion of the PAGA Payment not approved by the Court shall be added to the Net Settlement Amount and any additional amount ordered by the Court to be paid as the PAGA Payment shall be paid from the Total Settlement Amount; in no event shall Defendants be required to pay in excess of the Total Settlement Amount.

**18. Final Approval Hearing and Entry of Final Judgment.**

Upon expiration of the Response Deadline, with the Court's permission, a final approval hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (i) the Class Counsel Award; (ii) the Class Representatives' Enhancement Awards; (iii) Individual Settlement Payments; (iv) PAGA Payment and (v) Settlement Administrator Costs.

**19. Final Approval Order.**

Plaintiffs will request, and Defendants will concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order and a Final Judgment. Plaintiffs will request that the Final Approval Order certify the Settlement Class; approve the terms of the Settlement including the PAGA Payment; find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Agreement. The Parties shall jointly prepare the proposed Final Approval Order. Plaintiffs shall

be responsible for preparing the Motion for Final Approval, and any Motion Requesting Attorneys' Fees, Costs, and Class Representatives' Enhancement Awards, supporting declarations, and exhibits thereto, for final approval by the Court. Class Counsel agrees to provide Counsel for Defendants with drafts of all documents they intend to submit in support of their Motion for Final Approval and application for attorneys' fees and costs in advance of the filing of such documents at least seven days in advance of filing to allow Counsel for Defendants a reasonable time to review and comment on such papers and further agrees to reasonably incorporate the comments from Counsel for Defendants. The Parties must meet and confer and make all reasonable efforts to agree on any modifications to this Agreement that will result in entry of the Final Approval Order.

Upon the Court's issuance of the Final Approval Order, any pending appeals related to any prior rulings in the Lawsuits will be withdrawn by the appealing party. Final Approval of the Agreement is intended to resolve any existing disputes over prior court orders that have been entered in the Lawsuits.

**20. Nullification of Settlement Agreement.**

In the event (i) the Court denies preliminary approval of the Settlement and requires changes to the Agreement that would materially alter the terms of the Agreement and the Parties cannot reach agreement on those changes; (ii) the Court denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgment as provided herein; or (iv) the Settlement does not become final for any

other reason:

A. This Settlement Agreement shall be void ab initio and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

B. Any funds to be awarded or disbursed under this Settlement shall be returned to Defendants;

C. Any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties;

D. The conditional class certification (obtained for any purpose) shall be void ab initio and of no force and effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and

E. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

If more than 100 Settlement Class Members submit valid Requests for Exclusion, Defendants have the option to nullify this settlement within ten (10) days of notification by the Settlement Administrator after the Response Deadline of the total number of Requests for Exclusion, via a written notice to Plaintiffs' counsel. If Defendants exercise this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this

Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by Defendants.

**21. Release of Claims by Settlement Class Members.**

Upon the Effective Date, Plaintiffs and all Participating Class Members and all members of the PAGA Group, as well as their spouses, heirs, executors, administrators, trustees and/or permitted assigns, hereby do and shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all “Released Claims for the Homecare Settlement Class” as to those Participating Class Members who are members of the Homecare Settlement Class and from any and all “Released Claims for the Wage Statement Settlement Class” as to those Participating Class Members who are members of the Wage Statement Settlement Class and to the “PAGA Release” for all members of the PAGA Group. These releases will take effect whether or not a Participating Class Member or member of the PAGA Group receives his or her Individual Settlement Payment or cashes and deposits any check for the Individual Settlement Payment or PAGA Payment.

Because the settlement of PAGA claims in this Action is not a class action settlement subject to class action procedures, no Class Members can opt out from being included in the settlement of PAGA claims and being subject to the PAGA Release if the court approves the PAGA Settlement. Class Members will be sent

their PAGA Payment Amount regardless of whether they opt out of the Class Settlement and will be bound by the PAGA Release.

**22. Confidentiality Provision**

The Parties agree to keep the Settlement confidential up to and until the Court grants preliminary approval of the Settlement, except as required to seek preliminary approval from the Court, including filing the Agreement with the Court. Thereafter, the parties will agree to make no comments to the media or otherwise publicize the terms of the settlement, except that in response to media inquiries the Parties may refer the inquirer to the Settlement documents filed in Court and Plaintiffs' Counsel may update Plaintiffs' Counsel's websites to indicate the case has settled and who is handling the Settlement Administration. Further, Class Counsel may include a generic statement on their website that "[Law Firm settled a case for healthcare workers for \$5.5. million], and Class Counsel may include the name of the case, case number, venue, and a brief objective description of the case in declarations establishing their qualifications to be appointed class counsel in other cases. To the extent there are questions, the Parties will confer as to appropriate statements, if any, to be made, except that Class Counsel may respond to Class Member inquiries about Settlement Administration with information that is in the public record regarding the Settlement. All Plaintiffs have been advised to keep this matter confidential.

**23. No Effect on Employee Benefits.**

Amounts paid to Plaintiffs or other Settlement Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiffs or Settlement Class Members.

**24. No Admission by Defendants.**

Defendants deny any and all claims alleged in these Actions and denies all wrongdoing whatsoever. This Agreement is not a concession or admission and shall not be used against Defendants as an admission or indication with respect to any claim of any fault, concession, or omission by Defendants.

**25. Representation.**

All the Parties have been represented by counsel throughout all negotiations which preceded the execution of this Settlement, and all Parties have been advised by counsel prior to entering into this Settlement.

Class Counsel represent that they do not currently represent any current or former non-exempt external employees who worked for Defendants Maxim Healthcare Services, Inc. or Maxim Healthcare Staffing Services, Inc. in either the Homecare or Staffing divisions in connection with any other filed or anticipated claims, charges, grievances, or complaints against Defendant. Class Counsel also represent that Class Counsel have not used (except for the alleged solicitations by Thomas Rutledge prior to October 31, 2018 as described in the U.S. District Court's

Order dated February 8, 2019 Doc. Number 132) and will not use any confidential information obtained in the Actions to solicit or assist any other persons or attorneys to commence a claim or proceeding against Defendants.

**26. Exhibits and Headings.**

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

**27. Interim Stay of Proceedings.**

Upon full execution of this Agreement, the Parties agree that based upon Code of Civil Procedure §583.310 (“the 5-year rule”), the Actions shall be stayed in their entirety except for the proceedings necessary to implement and complete the Settlement.

**28. Amendment or Modification.**

This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

**29. Entire Agreement.**

This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits

other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering in to this Agreement based solely on the representations and warranties herein and not based on any promises, representation, and/or warranties not found herein.

**30. Authorization to Enter into Settlement Agreement.**

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of each Defendant represent and warrant that they are authorized to sign this Agreement on behalf of that Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

**31. Binding on Successors and Assigns.**

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

**32. California Law Governs.**

All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

**33. Counterparts.**

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

**34. Jurisdiction of the Court.**

Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

**35. Invalidity of Any Provision.**

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

**36. Increase in Workweeks As Compared to Representations Prior to Mediation.**

Defendants have represented that the Homecare Settlement Class and the Wage Statement Settlement Class are estimated to contain a combined total of approximately 44,000 unique class members through August 13, 2019. Defendants also represented that that the Homecare Settlement Class was estimated to cover 1,548,541 workweeks through July 22, 2019. Defendants further represented that that the Wage Statement Settlement Class was estimated to cover 833,382 workweeks between October 24, 2016 through July 22, 2019 (inclusive of any overlapping workweeks for any individuals who are members of both the Homecare Settlement Class and the Wage Statement Settlement Class). Upon receipt of the Class Data, the Settlement Administrator shall confirm to Plaintiffs that the Class Data is consistent with these representations. If the actual combined number of workweeks in the Homecare Settlement Class and the Wage Statement Settlement Class during that period is more than 2,501,019, *i.e.* 5% above the 2,381,923 weeks as represented by Defendants for both classes, Defendants shall have the option to increase the Total Settlement Amount pro rata for each additional workweek above 2,501,019 using the following formula: actual number of workweeks minus 2,501,019 divided by 2,501,019 times the Total Settlement Amount. If Defendants choose not to pay the additional pro rata amount and the actual number of combined workweeks for the Homecare Settlement Class and the Wage Statement Settlement

Class for the above time periods is greater than 5% above what Defendants previously represented, Plaintiffs may rescind the Settlement on behalf of the Class. If Plaintiffs exercise this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants have executed this Agreement as of the dates set forth below.

**IT IS SO AGREED:**

Dated: September 16, 2021

*Dilcia O. Crandall*

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

DILCIA CRANDALL

Dated: \_\_\_\_\_

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

BARBARA COHEN

Dated: \_\_\_\_\_

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

ELIZABETH FUENTES

Dated: \_\_\_\_\_

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

MYRNA JOHNSTON

Class for the above time periods is greater than 5% above what Defendants previously represented, Plaintiffs may rescind the Settlement on behalf of the Class. If Plaintiffs exercise this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants have executed this Agreement as of the dates set forth below.

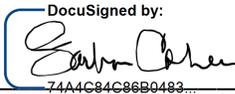
**IT IS SO AGREED:**

Dated: \_\_\_\_\_

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

DILCIA CRANDALL

Dated: 9/16/2021

By:  \_\_\_\_\_  
74A4C84C86B0483...

BARBARA COHEN

Dated: \_\_\_\_\_

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

ELIZABETH FUENTES

Dated: \_\_\_\_\_

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

MYRNA JOHNSTON

Class for the above time periods is greater than 5% above what Defendants previously represented, Plaintiffs may rescind the Settlement on behalf of the Class. If Plaintiffs exercise this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants have executed this Agreement as of the dates set forth below.

**IT IS SO AGREED:**

Dated: \_\_\_\_\_

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

DILCIA CRANDALL

Dated: \_\_\_\_\_

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

BARBARA COHEN

Dated: 9/16/21

By: 

ELIZABETH FUENTES

Dated: \_\_\_\_\_

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

MYRNA JOHNSTON

Class for the above time periods is greater than 5% above what Defendants previously represented, Plaintiffs may rescind the Settlement on behalf of the Class. If Plaintiffs exercise this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed.

WHEREFORE, Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants have executed this Agreement as of the dates set forth below.

**IT IS SO AGREED:**

Dated: \_\_\_\_\_

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

DILCIA CRANDALL

Dated: \_\_\_\_\_

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

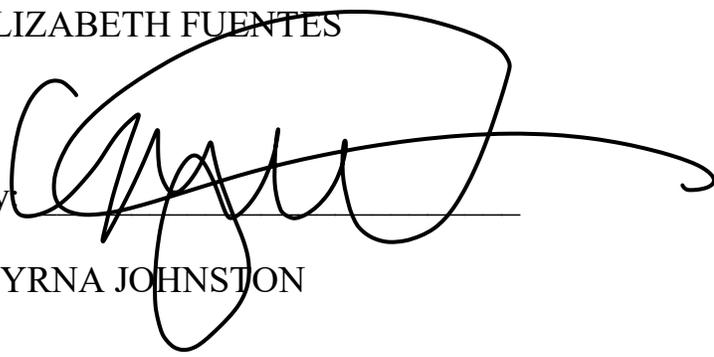
BARBARA COHEN

Dated: \_\_\_\_\_

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

ELIZABETH FUENTES

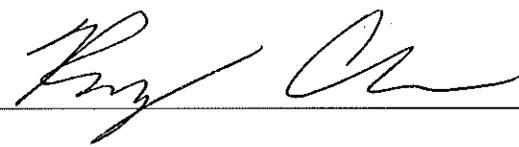
Dated: 9/16/2021

By: 

MYRNA JOHNSTON

Dated: 9/17/2021

MAXIM HEALTHCARE SERVICES, INC.

By: 

Print Name: Raymond Carbone

Title: CFO

**APPROVED AS TO FORM AND CONTENT:**

Dated: \_\_\_\_\_

**COHELAN KHOURY & SINGER**

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

Michael D. Singer,  
Attorneys for Plaintiffs Elizabeth Fuentes  
and Myrna Johnston and the Proposed  
Class

Dated: \_\_\_\_\_

MAXIM HEALTHCARE SERVICES, INC.

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT:**

Dated: September 16, 2021

**COHELAN KHOURY & SINGER**

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

Michael D. Singer,

Attorneys for Plaintiffs Elizabeth Fuentes

and Myrna Johnston and the Proposed

Class

Dated: 9-16-21

~~LAW OFFICES~~ OF THOMAS D. RUTLEDGE

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

Thomas D. Rutledge

Attorneys for Plaintiffs Elizabeth Fuentes  
and Myrna Johnston and the Proposed  
Class

Dated: July 13, 2021

**AEGIS LAW FIRM, PC**

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

Jessica Campbell

Attorneys for Plaintiffs Dilcia Crandall  
and Barbara Cohen and the Proposed  
Class

Dated: 7/13/21

**MORGAN, LEWIS & BOCKIUS LLP**

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

John S. Battenfeld

Lincoln O. Bisbee

Alexander L. Grodan

Attorneys for Defendants MAXIM  
HEALTHCARE SERVICES, INC. and  
MAXIM HEALTHCARE STAFFING  
SERVICES, INC.