

J. GILL LAW GROUP, P.C.
Jasmin K. Gill, Esq. (SBN 315090)
515 South Flower Street, Suite 1800
Los Angeles, California 90071
Tel: (310) 728-2137

BIBIYAN LAW GROUP, P.C.
David D. Bibiyan, Esq. (SBN 287811)
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, LUCY MORENO, an individual and on behalf of all others
similarly situated and/or aggrieved,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

LUCY MORENO, an individual and on
behalf of all others similarly situated and/or
aggrieved,

Plaintiff,

v.

SANTA PAULA POST ACUTE, LLC, a
California limited liability company; VISTA
COVE CARE CENTER AT SANTA PAULA,
INC., a California corporation; DOV E.
JACOBS, an individual; FLOYD RHOADES,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV12533

[Assigned to the Hon. Carolyn B. Kuhl in
Dept. SS-12]

CLASS ACTION

**FIRST AMENDED JOINT
STIPULATION RE: CLASS ACTION
AND REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: April 1, 2021
Trial Date: None Set

This First Amended Joint Stipulation re: Class Action and Representative Action
Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and
among plaintiff Lucy Moreno (“Plaintiff”), individually and on behalf of the Settlement Class,
as defined below, on the one hand; and defendant Santa Paula Post Acute, LLC (“Santa Paula or
“Defendant”), on the other hand; in the lawsuit entitled *Moreno v. Santa Paula Post Acute, LLC,*
et al., filed in the Los Angeles County Superior Court, Case No. 21STCV12533 (the “Action”).
Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties” and individually

1 as a "Party". This Agreement is intended by the Parties to fully, finally, and forever resolve,
2 discharge and settle the claims as set forth herein, based upon and subject to the terms and
3 conditions of this Agreement.

4 **1. DEFINITIONS**

5 **A. "Action"** means *Moreno v. Santa Paula Post Acute, LLC, et al.*, filed in Los
6 Angeles County Superior Court, Case No. 21STCV12533.

7 **B. "Aggrieved Employees"** means Class Members working for Defendant as non-
8 exempt, hourly-paid employees in California during the PAGA Period.

9 **C. "Class Counsel"** means: David D. Bibiyan of Bibiyan Law Group, P.C. and
10 Jasmin K. Gill of J. Gill Law Group, P.C. The term "Class Counsel" shall be used synonymously
11 with the term "Plaintiff's Counsel."

12 **D. "Class Period"** means the period from July 26, 2018 through: (1) May 24, 2022;
13 or on the date that the number of Workweeks worked by Class Members during the Class Period
14 reaches 30,800 if Defendants elects to shorten the Class Period pursuant to Paragraph 17 of the
15 Settlement Agreement.

16 **E. "Court"** means the Superior Court of the State of California for the County of
17 Los Angeles.

18 **F. "Class Notice"** means and refers to the notice sent to Class Members after
19 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
20 Agreement.

21 **G. "Defendant"** shall refer to defendant Santa Paula Post Acute, LLC.

22 **H. "Employer Taxes"** means employer-funded taxes and contributions imposed on
23 the wage portions of the Individual Settlement Payments under the Federal Insurance
24 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
25 and contributions required of employers, such as for unemployment insurance.

26 **I. "Final Approval Date"** means the later of: (1) the date the Court signs an Order
27 granting final approval of this Settlement ("Final Approval") and Judgment; (2) if there is an
28

1 objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals
2 have been filed, the date on which they have been resolved or exhausted.

3 **J. "General Release"** means the general release of claims by Plaintiff, which is in
4 addition to her limited release of claims as a Participating Class Member and Aggrieved
5 Employee.

6 **K. "Gross Settlement Amount"** means a non-reversionary fund in the sum of Four
7 Hundred Thousand Dollars and Zero Cents (\$400,000.00),¹ which shall be paid by Defendant,
8 and from which all payments for the Individual Settlement Payments to Participating Class
9 Members, Individual PAGA Payments to Aggrieved Employees and the Court-approved
10 amounts for attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel,
11 Settlement Administration Costs, a Service Award to Plaintiff, credit for payments of Thirty-Six
12 Thousand Dollars and Zero Cents (\$36,000.00) already made to Class Members by Defendant,
13 and the LWDA Payment for resolution of Plaintiff's cause of action for civil penalties under the
14 Labor Code Private Attorneys' General Act, codified at Labor Code Section 2698, *et seq.*
15 ("PAGA"), interest and certain taxes shall be paid. It expressly excludes Employer Taxes, which
16 shall be paid by Defendant separate and apart from the Gross Settlement Amount.

17 **L. "Individual PAGA Payment"** means a payment to an Aggrieved Employee of
18 his or her share of the PAGA Payment.

19 **M. "Individual Settlement Payment"** means a payment to a Participating Class
20 Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to
21 which he or she may be entitled if he or she is also an Aggrieved Employee.

22 **N. "Individual Settlement Share"** means the gross amount of the Net Settlement
23 Amount that a Participating Class Member is projected to receive based on the number of
24 Workweeks that he or she worked as a Settlement Class Member during the Class Period if he or
25 she does not submit a timely and valid Request for Exclusion, excluding any PAGA Payment to
26 which he or she may be entitled if he or she is also an Aggrieved Employee.

27
28 ¹ As the same may be increased in accordance with Paragraph 17.

1 **O. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
2 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
3 from the Gross Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and
4 Zero Cents (\$20,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of which
5 Fifteen Thousand Dollars and Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the
6 LWDA Payment) and Five Thousand Dollars and Zero Cents (\$5,000.00) will remain a part of
7 the Net Settlement Amount for payment to Aggrieved Employees on a *pro rata* basis, based on
8 the Workweeks worked for Defendants as a non-exempt, hourly-paid employee in California in
9 the PAGA Period.

10 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
11 that is available for distribution to Participating Class Members after deductions for the Court-
12 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
13 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, credit for
14 payments of Thirty-Six Thousand Dollars and Zero Cents (\$36,000.00) already made to class
15 members by Defendants, the LWDA Payment, and the PAGA Payment.

16 **Q. “Operative Complaint or “Complaint”** means the Complaint that was filed with
17 the Court in *Moreno v. Santa Paula Post Acute, LLC, et al.*, filed in the Los Angeles County
18 Superior Court, Case No. 21STCV12533.

19 **R. “PAGA Payment”** is the \$5,000.00 payment payable to Aggrieved Employees
20 in addition to their Individual Settlement Share if they do not opt out of the Settlement.

21 **S. “PAGA Period”** means the period from March 12, 2020 through the end of the
22 Class Period.

23 **T. “Participating Class Members”** means all Settlement Class Members and
24 Release Class Members who do not submit a timely and valid Request for Exclusion.

25 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
26 Settlement Amount that a Participating Class Member is eligible to receive based on the number
27 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
28

1 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
2 may be entitled if he or she is also an Aggrieved Employee.

3 **V. "Parties"** shall refer to Plaintiff and Defendant collectively.

4 **W. "Plaintiff"** shall refer to Plaintiff Lucy Moreno.

5 **X. "Preliminary Approval Date"** means the date on which the Court enters an
6 Order granting preliminary approval of the Settlement.

7 **Y. "Released Parties"** shall mean Defendants Santa Paula and Dov E. Jacobs as well
8 as each of Santa Paula's past, present, and future respective affiliates, parents, subsidiaries,
9 predecessors, successors, divisions, joint ventures and assigns, and each of these entities' past or
10 present directors, officers, employees, partners, members, principals, agents, insurers, co-
11 insurers, re-insurers, shareholders, attorneys, and personal or legal representatives. Released
12 Parties shall not include Defendants Vista Cove Care Center At Santa Paula, Inc. and Floyd
13 Rhoades.

14 **Z. "Response Deadline"** means the deadline for Settlement Class Members to mail
15 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
16 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
17 and Spanish by the Settlement Administrator, unless a Class Member's notice is re-mailed. In
18 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
19 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
20 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
21 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
22 Workweek Dispute was submitted by the Response Deadline.

23 **AA. "Request for Exclusion"** means a written request to be excluded from the
24 Settlement Class pursuant to Section 9.C below.

25 **BB. "Service Award"** means monetary amount to be paid to Plaintiff of up to Seven
26 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) which, subject to Court approval,
27 will be paid out of the Gross Settlement Amount.
28

1 **CC. “Settlement Administration Costs”** means all costs incurred by the Settlement
2 Administrator in administration of the Settlement, including, but not limited to, translating the
3 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
4 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
5 associated taxes and withholdings, providing declarations, generating Individual Settlement
6 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
7 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
8 fees and reimbursement of litigation costs and expenses, to Plaintiff for her Service Award, and
9 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
10 related information, and any other actions of the Settlement Administrator as set forth in this
11 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs
12 are estimated not to exceed \$11,250.00. If the actual amount of the Settlement Administration
13 Costs is less than \$11,250.00, the difference between \$11,250.00 and the actual Settlement
14 Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
15 Administration Costs exceed \$11,250.00, then such excess will be paid solely from the Gross
16 Settlement Amount and Defendants will not be responsible for paying any additional funds in
17 order to pay these additional costs.

18 **DD. “Settlement Administrator”** means the Third-Party Administrator chosen to be
19 responsible for the administration of the Settlement including, without limitation, translating the
20 Class Notice in Spanish, the distribution of the Individual Settlement Payments to be made by
21 Defendants from the Gross Settlement Amount and related matters under this Agreement.

22 **EE. “Settlement Class”, “Settlement Class Members” or “Class Members”** means
23 all current and former non-exempt, hourly-paid employees who worked in California for
24 Defendant at any time during the Class Period and did not sign any release with Defendant prior
25 to this Settlement.

26 **FF. “Release Class Members”** means all current and former non-exempt, hourly-
27 paid employees who worked in California for Defendant at any time during the Class Period and
28 signed a release with Defendant in exchange for \$200.00.

1 **GG. “Workweek”** means the number of weeks that a Settlement Class Member was
2 employed by Defendants in a non-exempt, hourly-paid position during the Class Period in
3 California, based on hire dates, re-hire dates (as applicable) and termination dates (as applicable),
4 in a non-exempt, hourly position during the Class Period, as well as any additional information
5 Defendant may provide to the Settlement Administrator regarding the weeks any Settlement
6 Class Member actually worked or did not work during the Class Period.

7 **2. BACKGROUND**

8 **A.** On March 12, 2021, Plaintiff filed with the Labor and Workforce Development
9 Agency (“LWDA”) and served on Defendant a notice under Labor Code section 2699.3 (the
10 “PAGA Notice”) stating Plaintiff intended to serve as a proxy of the LWDA to recover civil
11 penalties for Aggrieved Employees. The PAGA Notice includes violations of law pled in the
12 Class Action, in addition to a request for penalties for failure to comply with Labor Code sections
13 204, 246, 432, 1174, 1198.5, and 2810.5.

14 **B.** On April 1, 2021, Plaintiff filed a putative wage-and-hour Class Action Complaint
15 in the Superior Court of California for the County of Los Angeles, Case Number 21STCV12533
16 (the “Action”). Plaintiff alleged that during the Class Period, with respect to Plaintiff and the
17 Settlement Class Members, Defendants, *inter alia*, failed to pay overtime and minimum wages;
18 failed to provide complaint meal and rest periods or compensation in lieu thereof; waiting time
19 penalties; wage statement violations; violated Labor Code section 2802; violated Labor Code
20 section 227.3; and engaged in unfair competition based on the alleged Labor Code violations,
21 which included Plaintiff’s representative allegations and claims for civil penalties under PAGA.

22 **C.** Shortly after the filing of this Action, the Parties agreed to exchange informal
23 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
24 among other things: (1) time and payroll records for all Class Members; (2) the approximate
25 number of workweeks worked during the Class Period; (3) the approximate number of Class
26 Members that worked for Santa Paula from April 1, 2017, through mediation; (4) the approximate
27 number of Class Members that worked from March 12, 2020 through mediation; (5) the
28 approximate number of Class Members and Aggrieved Employees who worked during the

1 PAGA Period; (6) information indicating whether any employee signed a purported meal period
2 waiver, on-duty meal period agreement, and/or release; (7) hire dates, separation dates (as
3 applicable), and final rates of pay for the estimated three-hundred and ninety-five (395) Class
4 Members working for Defendants during the Class Period along with a list of employee positions
5 by job title; and (8) all relevant policy documents and employee handbooks.

6 **D.** On March 22, 2022, the Parties participated in a mediation before Lynn Frank,
7 Esq., a well-regarded mediator experienced in mediating complex civil disputes. With the aid of
8 the mediator's evaluation, the Parties reached the Settlement to resolve the Action shortly after
9 mediation.

10 **E.** Class Counsel has conducted significant investigation of the law and facts relating
11 to the claims asserted in the Action and the PAGA Notice, and have concluded that that the
12 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
13 Class, taking into account the sharply contested issues involved, the expense and time necessary
14 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
15 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
16 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
17 to be received by the Settlement Class Members.

18 **F.** Defendant has concluded that, because of the substantial expense of defending
19 against the Action, the length of time necessary to resolve the issues presented herein, and the
20 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
21 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
22 claims asserted against them in the Action. However, Defendant nevertheless desires to settle the
23 Action for the purpose of avoiding the burden, expense and uncertainty of continuing litigation
24 and for the purpose of putting to rest the controversies engendered by the Action.

25 **G.** This Agreement is intended to and does effectuate the full, final, and complete
26 resolution of (a) all Class Released Claims of Plaintiff and Participating Class Members, (b) all
27 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
28

1 and Aggrieved Employees, and (c) all claims Plaintiff has or may have against any and all
2 Released Parties.

3 **3. JURISDICTION**

4 The Court has jurisdiction over the Parties and the subject matter of the Action. The
5 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
6 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
7 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
8 pursuant to California Rule of Court, rule 3.769, subdivision (h).

9 **4. STIPULATION OF CLASS CERTIFICATION**

10 The Parties stipulate to the certification of the Settlement Class under this Agreement for
11 purposes of settlement only.

12 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

13 After full execution of this Agreement, Plaintiff will move for an order granting preliminary
14 approval of the Settlement, approving and directing the mailing of the proposed Notice of Class
15 Action Settlement ("Class Notice") attached hereto as **Exhibit "A"**, conditionally certifying the
16 Settlement Class for settlement purposes only, and approving the deadlines proposed by the
17 Parties for the submission of Requests for Exclusion, Workweek Disputes, and Objections. If
18 and when the Court preliminarily approves the Settlement, and after administration of the Class
19 Notice in a manner consistent with the Court's Preliminary Approval Order, Plaintiff will move
20 for an order finally approving the Settlement and seek entry of a Judgment in line with this
21 Settlement.

22 **6. STATEMENT OF NO ADMISSION**

23 Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff,
24 the Settlement Class and Aggrieved Employees with respect to any claims or allegations asserted
25 in the Action. This Agreement shall not be deemed an admission by Defendant of any claims or
26 allegations asserted in the Action. Except as set forth elsewhere herein, in the event that this
27 Agreement is not approved by the Court, or any appellate court, is terminated, or otherwise fails
28 to be enforceable, Plaintiff will not be deemed to have waived, limited or affected in any way

any claims, rights or remedies, or defenses in the Action, and Defendant will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Action. The Parties shall be restored to their respective positions in the Action prior to the entry of this Settlement.

7. RELEASE OF CLAIMS

A. Release by All Participating Class Members.

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiff and all Participating Class Members release the Released Parties of all claims against the Released Parties asserted in the Operative Complaint, or any and all claims that could have been asserted against the Released Parties based on the factual allegations in the Operative Complaint, as follows: For Participating Class Members, the release includes, for the duration of the Class Period: (a) all claims for failure to pay minimum wages; (b) all claims for failure to pay overtime wages; (c) all claims for failure to provide compliant meal and rest periods or compensation in lieu thereof; (d) all claims for failure to timely pay all wages due upon termination or resignation; (e) all claims for non-compliant wage statements; (f) all claims for failure to reimburse business expenses; (g) all claims for violation of Labor Code section 227.3; and (h) all claims under California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint (the "Class Released Claims").

B. Release by All Aggrieved Employees

For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims asserted in the PAGA Notice and alleged in the Operative Complaint, including all claims for civil penalties under PAGA arising out of Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 based on the factual allegations and Labor Code sections alleged to have been violated in the PAGA Notice and Operative Complaint, which includes, without limitation, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246 *et seq.*, 404, 432, 510, 512, 1102.5, 1174, 1174.5, 1194, 1197, 1197.5, 1198.5, 2802 and 2810.5 (the "PAGA

Released Claims"). The Class Released Claims and PAGA Released Claims shall be referred to herein as the "Released Claims".

C. General Release.

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in addition to the Released Claims, Plaintiff makes the additional following General Release: Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of full execution of this Agreement in connection with her employment or the termination thereof. With respect to the General Release, Plaintiff stipulates and agrees that, through the Final Approval Date, Plaintiff shall be deemed to have, and by operation of the Final Judgment and payment to the Settlement Administrator shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, 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.

8. SETTLEMENT ADMINISTRATOR

Plaintiff and Defendant, through their respective counsel, have selected Phoenix Settlement Administrators to administer the Settlement, which includes but is not limited to translating the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$11,250.00 will be paid from

1 the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is
2 less than \$11,250.00, the difference between \$11,250.00 and the actual Settlement
3 Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
4 Administration Costs exceed \$9,500.00, then such excess will be paid solely from the Gross
5 Settlement Amount and Defendants will not be responsible for paying any additional funds in
6 order to pay these additional costs.

7 **9. NOTICE, WEEKLY PAY PERIOD DISPUTE, OBJECTION, AND EXCLUSION**
8 **PROCESS**

9 **A. Notice to the Settlement Class Members.**

10 (1) Within ten (10) calendar days after the Preliminary Approval Date,
11 Defendant's Counsel shall provide the Settlement Administrator with information with respect
12 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
13 known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social
14 Security Number in Defendants' possession, custody, or control; (3) the hire dates, re-hire dates
15 (if applicable) and termination dates (if applicable) for each Settlement Class Member; and
16 identify all Release Class Members ("Class List"). The Settlement Administrator shall perform
17 an address search using the United States Postal Service National Change of Address ("NCOA")
18 database and update the addresses contained on the Class List with the newly found addresses, if
19 any. Within seven (7) calendar days of receiving the Class List from Defendant, the Settlement
20 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
21 Members via first-class regular U.S. Mail using the most current mailing address information
22 available. The Settlement Administrator shall maintain a list with names and all addresses to
23 which notice was given, and digital copies of all the Settlement Administrator's records
24 evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from
25 the Final Approval Date. Such information shall be available to Class Counsel and Defendant's
26 Counsel upon request.

27 ///

28 ///

- 1 (2) The Class Notice will set forth:
- 2 (a) the Settlement Class Member's estimated Individual Settlement
- 3 Payment and Individual PAGA Payment, and the basis for each;
- 4 (b) the information required by California Rule of Court, rule 3.766,
- 5 subdivision (d);
- 6 (c) the material terms of the Settlement;
- 7 (d) the proposed Settlement Administration Costs;
- 8 (e) the definition of the Settlement Class;
- 9 (f) a statement that the Court has preliminarily approved the
- 10 Settlement;
- 11 (g) how the Settlement Class Member can obtain additional
- 12 information, including contact information for Class Counsel;
- 13 (h) information regarding opt-out and objection procedures;
- 14 (i) the date and location of the Final Approval Hearing; and
- 15 (j) that the Settlement Class Member must notify the Settlement
- 16 Administrator no later than the Response Deadline if the
- 17 Settlement Class Member disputes the accuracy of the number of
- 18 Weekly Pay Periods as set forth on his or her Class Notice
- 19 ("Workweek Dispute"). If a Settlement Class Member fails to
- 20 timely dispute the number of Workweeks attributed to him or her
- 21 in conformity with the instructions in the Class Notice, then he or
- 22 she shall be deemed to have waived any objection to its accuracy
- 23 and any claim to any additional settlement payment based on
- 24 different data.

- 25 (3) If a Class Notice from the initial notice mailing is returned as
- 26 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
- 27 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
- 28 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class

1 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
2 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
3 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
4 Administrator with a forwarding address before the Response Deadline shall be promptly re-
5 mailed to the forwarding address affixed thereto.

6 (4) No later than seven (7) calendar days from the Response Deadline, the
7 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
8 completion of the notice process, including the number of attempts to obtain valid mailing
9 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
10 and copies of all Requests for Exclusion and objections/comments received by the Settlement
11 Administrator.

12 **B. Objections.**

13 Only Participating Class Members may object or comment regarding the Settlement. In
14 order for any Settlement Class Member to object to this Settlement in writing, or any term of it,
15 he or she must do so by mailing a written objection to the Settlement Administrator at the address
16 or phone number provided on the Class Notice no later than the Response Deadline. The
17 Settlement Administrator shall email a copy of the objection forthwith to Class Counsel and
18 Defendant's counsel and attach each objection, if any, to the declaration that Class Counsel files
19 with the Court in support of the Motion for Final Approval. The objection should set forth in
20 writing: (1) the Objector's name; (2) the Objector's address; (3) the last four digits of the
21 Objector's Social Security Number; (4) the Objector's signature; (5) a statement of whether the
22 Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection,
23 along with whatever legal authority, if any, the Objector asserts in support of the Objection. If a
24 Settlement Class Member objects to the Settlement, the Settlement Class Member will remain a
25 member of the Settlement Class and if the Court approves this Agreement, the Settlement Class
26 Member will be bound by the terms of the Settlement in the same way and to the same extent as
27 a Settlement Class Member who does not object. The date of mailing of the Class Notice to the
28 objecting Settlement Class Member shall be conclusively determined according to the records of

1 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
2 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
3 expense. Class Counsel and Defendants' Counsel may respond to any objection lodged with the
4 Court up to five (5) court days before the Final Approval Hearing.

5 **C. Requesting Exclusion.**

6 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
7 Settlement by mailing a written request to be excluded from the Settlement ("Request for
8 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
9 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
10 Member's Social Security Number; (3) the Class Member's signature; and (4) the following
11 statement or something to its effect: "Please exclude me from the Settlement Class in the *Lucy*
12 *Moreno v. Santa Paula Post Acute, LLC, et al.* matter" or any statement of similar meaning
13 standing for the proposition that the Class Member does not wish to participate in the Settlement.
14 The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
15 Class Counsel and Defendant's Counsel and shall report the Requests for Exclusions that it
16 receives, to the Court, in its declaration to be provided in advance of the Final Approval Hearing.
17 Any Settlement Class Member who requests exclusion using this procedure will not be entitled
18 to receive any payment from the Settlement and will not be bound by the Settlement Agreement
19 or have any right to object to, appeal, or comment on the Settlement. Any Settlement Class
20 Member who does not opt out of the Settlement by submitting a timely and valid Request for
21 Exclusion will be bound by all terms of the Settlement, including those pertaining to the Released
22 Claims, as well as any Judgment that may be entered by the Court if Final Approval of the
23 Settlement is granted. A Settlement Class Member cannot submit both a Request for Exclusion
24 and an objection. If a Settlement Class Member submits an objection and a Request for
25 Exclusion, the Request for Exclusion will control and the Objection will be void. Settlement
26 Class Members who worked during the PAGA Period that submit a valid Request for Exclusion
27 will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payment,
28 and will be bound by the release encompassed in the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweeks Data.

Class Members will have an opportunity to dispute the information provided in their Class Notice. To the extent Class Members dispute the number of Workweeks to which they have been credited, Class Members may produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Settlement Administrator will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of Workweeks that should be applied. All such disputes are to be resolved not later than ten (10) calendar days after the Response Deadline.

E. Extension of Response Deadline for Remailing

If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion, written Objection or to dispute their attributed workweek count in the Class Period and/or PAGA Period.

10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS TO PARTICIPATING CLASS MEMBERS

Individual Settlement Payments will be calculated and distributed to Participating Class Members who are also Release Class Members from the Net Settlement Amount on a *pro rata* basis based on his or her respective number of Workweeks during the Class Period, minus \$200.00 for amounts he or she already received. If a Release Class Member is owed an amount less than \$200.00 under this Settlement, then that Release Class Member will not be issued any Individual Settlement Payments. Individual Settlement Payments will be calculated and distributed to Participating Class Members from the "Remaining Net Settlement Amount" (as defined below) on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks

1 during the PAGA Period. Specific calculations of the Individual Settlement Shares and
2 Individual PAGA Payments to Aggrieved Employees will be made as follows:

3 **A.** The Settlement Administrator will determine the total number of Workweeks
4 worked by each Settlement Class Member and Release Class Member during the Class Period,
5 as well as the aggregate number of Workweeks worked by all Participating Class Members
6 during the Class Period ("Participating Class Workweeks"), the aggregate number of
7 Workweeks worked by all Release Class Members (who do not-opt out) during the Class Period
8 (Release Class Workweeks"), and the aggregate number of Workweeks worked by all
9 Settlement Class Members (who do not opt-out) during the Class Period ("Settlement Class
10 Workweeks"). Additionally, the Settlement Administrator will determine the total number of
11 Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved
12 Employee's Workweeks"), as well as the aggregate number of Workweeks worked by all
13 Aggrieved Employees during the PAGA Period ("PAGA Workweeks").

14 **B.** To determine each Release Class Member's Participating Individual Settlement
15 Share the Settlement Administrator will use the following formula: [Individual Settlement
16 Share = (Release Class Member's Workweeks ÷ Participating Class Workweeks) x Net
17 Settlement Amount] - \$200.00.

18 **C.** The remainder of the Net Settlement Amount, after deductions for Individual
19 Settlement Payments to Participating Class Members who are Release Class Members, shall be
20 considered the "Remaining Net Settlement Amount." Participating Class Members who are
21 not Release Class Members, shall be paid from the Remaining Net Settlement Amount.

22 **D.** To determine each Settlement Class Member's Participating Individual
23 Settlement Share, the Settlement Administrator will use the following formula: Individual
24 Settlement Share = (Settlement Class Member's Workweeks ÷ Settlement Class Workweeks)
25 × Remaining Net Settlement Amount.

26 **E.** The net amount of the Participating Individual Settlement Share is to be paid out
27 to Participating Class Members by way of check and is referred to as "Individual Settlement
28 Payment(s)".

F. To determine each Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee's Individual PAGA Payment = ([Aggrieved Employee's Workweeks ÷ PAGA Workweeks] x \$5,000.00) (the "PAGA Payment").

G. Individual Settlement Payments and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

Participating Class Members will receive an Individual Settlement Payment. All Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not, will receive their Individual PAGA Payment. Individual Settlement Payment checks and Individual PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day period, checks for such payments shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180 Montgomery St., Suite 600 San Francisco, California 94104 for use in the County of Los Angeles, State of California. The Parties and their counsel, by signing this Agreement, agree that they have no interest in the governance of the *cypres* recipient, nor do they have a conflict of interest with the *cypres* recipient designated herein. The Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel along with a proposed amended judgment that is consistent with the provisions of Code of Civil Procedure section 384.

B. Funding of Settlement.

1 No later than fifteen (15) calendar days after the Preliminary Approval Date, Defendant
2 shall commence making equal monthly installment payments towards the Gross Settlement
3 Amount of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) unless the same is
4 escalated pursuant to Paragraph 17 below (and in such event, the escalated gross settlement
5 amount to be paid over a 3-year period in equal monthly installment payments) to the Settlement
6 Administrator. Defendant shall be credited Thirty-Six Thousand Dollars and Zero Cents
7 (\$36,000.00) for payments already made to Class Members from the Gross Settlement Amount,
8 therefore, Defendant shall pay the remaining Three Hundred Sixty-Four Thousand Dollars and
9 Zero Cents (\$364,000.00) as follows: No later than fifteen (15) calendar days after the
10 Preliminary Approval Date, Defendant shall make the first monthly installment payment of Ten
11 Thousand, One Hundred, and Eleven Dollars and Fifteen Cents (\$10,111.15) (the "First
12 Installment Payment") to the Settlement Administrator in addition to a prorated portion (i.e. one
13 thirty-sixth (1/36th) of Employer's Taxes pursuant to Internal Revenue Code section 1.468B-1
14 for deposit in an interest-bearing qualified settlement account ("QSA") with an FDIC insured
15 banking institution, for distribution in accordance with this Agreement and the Court's orders
16 and subject to the conditions described herein.

17 Thereafter, on the first Tuesday of each calendar month following the month that the First
18 Installment Payment is made, Defendant shall make monthly installment payments of Ten
19 Thousand, One Hundred, and Eleven Dollars and Eleven Cents (\$10,111.11) (the "Remaining
20 Installment Payments") to the Settlement Administrator in addition to a prorated portion (i.e. one
21 thirty-sixth (1/36th) of Employer's Taxes for each Remaining Installment Payment for thirty-
22 five (35) calendar months until the Gross Settlement Amount of Four Hundred Thousand Dollars
23 and Zero Cents (\$400,000.00) is paid in full² pursuant to Internal Revenue Code section 1.468B-
24 1 for deposit in an interest-bearing qualified settlement account ("QSA") with an FDIC insured
25 banking institution, for distribution in accordance with this Agreement and the Court's orders
26

27 ² The Gross Settlement Amount, and all Employer's Taxes for each of the payments made, must be paid
28 in full within a 3-year period commencing upon Preliminary Approval. If escalated pursuant to Paragraph
17 of this Agreement, the escalated amount and all Employer's Taxes for each of the payments made,
must be paid in full within a 3-year period commencing upon Preliminary Approval.

1 and subject to the conditions described herein.

2 In the event that Defendant fails to make any monthly installment payment as required
3 by the terms of this Settlement Agreement, Class Counsel shall provide notice of failure to make
4 payment to Defendant's Counsel via email at jmdecastro@decastrolawgroup.com and provide
5 Defendant seven (7) calendar days to provide to the Settlement Administrator the missed
6 payment. If Defendant fails to make the payment within seven (7) calendar days of Class
7 Counsel's notice, then Defendant shall pay the entire Gross Settlement Amount less any sums
8 already paid within six (6) months of Class Counsel's notice of failure to make payment.

9 Acceptance of a late payment by Class Counsel and/or the Settlement Administrator shall
10 not constitute a waiver, nor should it in any way prejudice any party's rights to receive and
11 demand timely payments thereafter.

12 Individual Settlement Payments and Individual PAGA Payments shall be paid
13 exclusively from the QSA, pursuant to the settlement formula set forth herein. Payments from
14 the QSA shall be made for (1) the Service Award to Plaintiff as specified in this Agreement and
15 approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as
16 specified in this Agreement and approved by the Court; (3) the Settlement Administrator Costs,
17 as specified in this Agreement and approved by the Court; and (4) the LWDA Payment, as
18 specified in this Agreement. \$5,000 shall be allocated to payment to Aggrieved Employees of
19 Individual PAGA Payments as set forth herein. The balance and any accrued interest thereon
20 remaining shall constitute the Net Settlement Amount from which Individual Settlement
21 Payments shall be made to Participating Class Members, less applicable taxes and withholdings.
22 All interest accrued shall be for the benefit of Participating Class Members and distributed on a
23 *pro rata* basis.

24 **C. Time for Distribution.**

25 One (1) year after the Order granting Final Approval, the Settlement Administrator will
26 issue an initial distribution of Individual Settlement Payments to Participating Class Members
27 who are Settlement Class Members and **not Release Class Members** based on the funds received
28 to date at that time pursuant to Paragraph 11(B) of this Agreement. The Individual Settlement

1 Payments to Participating Class Members who are Settlement Class Members and **not Release**
2 **Class Members** will be based on the percentage of funds received to date at that time relative to
3 the total Gross Settlement Amount. By way of example, if 1/3 of the total Gross Settlement
4 Amount has been funded, then each Individual Settlement Payment to Participating Class
5 Members who are Settlement Class Members and **not Release Class Members** under the initial
6 distribution shall be 1/3 of the total Individual Settlement Payment each Participating Class
7 Member is due under this Settlement.

8 A second distribution shall occur no more than seven (7) calendar days after payment of
9 the full Gross Settlement Amount (as the same may be increased to in accordance with Paragraph
10 17) by Defendant, as well as Employer Taxes. In the second distribution of payments, the
11 Settlement Administrator shall distribute all remaining payments due under the Settlement,
12 including all remaining Individual Settlement Payments to Participating Class Members and
13 Individual PAGA Payments to Aggrieved Employees, as well as the Court-approved payments
14 for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class
15 Counsel, administration costs to the Settlement Administrator, and the LWDA Payment to the
16 LWDA.

17 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

18 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
19 fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless increased
20 pursuant to Paragraph 17, shall amount to One Hundred and Forty Thousand Dollars and Zero
21 Cents (\$140,000.00). Class Counsel shall further apply for, and Defendants shall not oppose, an
22 application or motion by Class Counsel for reimbursement of actual costs associated with Class
23 Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to
24 Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and
25 costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and
26 costs necessary to prosecute, settle, and obtain Final Approval of the settlement in the Action.
27 The "future" aspect of the amounts stated herein includes, without limitation, all time and
28 expenses expended by Class Counsel (including any appeals therein), except for any matters that

1 arise from Defendants' failure to materially comply with the terms of this Agreement. There will
2 be no additional charge of any kind to either the Settlement Class Members or request for
3 additional consideration from Defendants for such work unless, in the event of a material breach
4 of this Agreement by Defendants, Plaintiff is required to move the Court for enforcement of this
5 Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
6 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
7 be a part of the Net Settlement Amount.

8 **13. SERVICE AWARD TO PLAINTIFF**

9 Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not
10 to exceed Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00) for participation
11 in and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from
12 the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves
13 a Service Award to Plaintiff in less than the amounts sought herein, then the unapproved
14 portion(s) shall be a part of the Net Settlement Amount.

15 **14. TAXATION AND ALLOCATION**

16 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages
17 (to be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an
18 IRS Form 1099). The Individual PAGA Payments to the Aggrieved Employees shall be
19 allocated entirely as penalties (to be reported on an IRS Form 1099). The Parties agree that the
20 employee's share of taxes and withholdings with respect to the wage-portion of the Individual
21 Settlement Share will be withheld from the Individual Settlement Share in order to yield the
22 Individual Settlement Payment. The amount of federal income tax withholding will be based
23 upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg.
24 § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made
25 pursuant to applicable state and/or local withholding codes or regulations.

26 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
27 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
28 "Code") and consistent with this Agreement. If the Code, the regulations promulgated

1 thereunder, or other applicable tax law, is changed after the date of this Agreement, the
2 processes set forth in this Section may be modified in a manner to bring Defendants into
3 compliance with any such changes.

4 C. All Employer Taxes shall be paid by Defendant separate, apart and above
5 from the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share
6 of payroll taxes as described above.

7 D. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
8 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
9 be relied upon as such within the meaning of United States Treasury Department Circular 230
10 (31 C.F.R. Part 10, as amended) or otherwise.

11 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

12 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
13 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
14 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA
15 (*i.e.*, the LWDA Payment), and twenty-five percent (25%) of the amount allocated toward PAGA
16 (\$5,000.00) shall be deemed the "PAGA Payment" and distributed to Aggrieved Employees on
17 a *pro rata* basis based upon their respective Workweeks worked during the PAGA Period (*i.e.*,
18 the Individual PAGA Payments).

19 **16. COURT APPROVAL**

20 This Agreement is contingent upon an order by the Court granting Final Approval of the
21 Settlement, and that the LWDA does not intervene and/or object to the Settlement. In the event
22 it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the
23 Parties shall be restored to their respective positions in the Action prior to entry of this Settlement.
24 If this Settlement Agreement is voided, not approved by the Court or approval is reversed on
25 appeal, it shall have no force or effect and no Party shall be bound by its terms except to the
26 extent: (a) the Court reserves any authority to issue any appropriate orders when denying
27 approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically
28

1 stated to survive the Settlement Agreement being voided or not approved, and which control in
2 such an event.

3 **17. INCREASE IN WORKWEEKS**

4 Defendant represents that it has estimated there are no more than 28,000 Workweeks
5 worked during the Class Period. In the event the number of Workweeks worked by Class
6 Members during the Class Period increases by more than 10%, or 2,800 workweeks worked,
7 then Defendant may elect to: (1) shorten the Class Period to end on a date prior to May 24,
8 2022, when 30,800 Workweeks have been reached; or (2) increase the Gross Settlement
9 Amount proportionally over the 10% increase in the number of Workweeks worked during the
10 Class Period. The election between shortening the Class period to end on a date prior to May
11 24, 2022 or increasing the Gross Settlement Amount proportionally over the 10% increase will
12 be at Defendants' option. If Defendant elects to increase the Gross Settlement Amount
13 proportionally over the 10% increase, by way of example, if the number of Workweeks worked
14 by Class Members during the Class Period exceeds 28,000 by 11% (*i.e.* the number of
15 Workweeks worked by Class Members is 31,080), the Gross Settlement Amount will increase
16 by 1% from \$400,000.00 to \$404,000.00. Likewise, if the number of Workweeks worked by
17 Class Members during the Class Period exceeds 28,000 by 12% (*i.e.* the number of Workweeks
18 worked by Class Members is 31,360), the Gross Settlement Amount will increase by 2% from
19 \$400,000.00 to \$408,000.00. For the purposes of this calculation, the percentage, if any, by
20 which the actual Workweeks worked by Class Members during the Class Period exceeds
21 28,000 shall be rounded to the nearest one one-hundredth of one percent.

22 **18. VOIDING OF SETTLEMENT AND RETURN OF GROSS SETTLEMENT**
23 **AMOUNT AND EMPLOYERS' TAXES**

24 Defendant has the option of voiding this Agreement within seven (7) calendar days of
25 receiving the Settlement Administrator's Declaration if the Settlement Administrator's
26 Declaration indicates that the number of Settlement Class Members who have timely submitted
27 a valid Requests for Exclusion (*i.e.*, opt out) is ten percent (10%) or more of all Class Members,
28 which option shall be exercised by providing written notice to Class Counsel and the Settlement

1 Administrator. If the foregoing occurs, this Agreement shall be null and void *ab initio*, no Party
2 shall be bound by the terms thereof, and this Agreement shall not be admissible or offered into
3 evidence in the litigation or any other action for any purpose whatsoever, and any order or
4 judgment entered by the Court in furtherance of this Agreement shall be treated as withdrawn or
5 vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective
6 positions as of the date immediately prior to the execution of this Agreement, the Parties shall
7 proceed in all respects as if this Agreement had not been executed, Defendant shall have no
8 obligation to make any payments to Plaintiff, Counsel for Plaintiff, the LWDA, or any Class
9 Member, and the Settlement Administrator shall return the entirety of the Gross Settlement
10 Amount and Employers' Taxes to Defendant within seven (7) calendar days of receipt of
11 Defendant's written notice exercising the option to void this Agreement. In the event either Party
12 voids the Settlement pursuant to the terms of this Agreement, any amounts owed to the Settlement
13 Administrator shall be paid by the voiding Party.

14 **19. NOTICE OF JUDGMENT**

15 In addition to any duties set out herein, the Settlement Administrator shall provide
16 notice of the Final Judgment entered in the Action by posting the same on its website for at
17 least four (4) years after the Judgment becomes final.

18 **20. MISCELLANEOUS PROVISIONS**

19 **A. Interpretation of the Agreement.**

20 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
21 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
22 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
23 oral or written representations or terms shall modify, vary or contradict its terms. In entering
24 into this Agreement, the Parties agree that this Agreement is to be construed according to its
25 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
26 interpreted and enforced under the laws of the State of California, both in its procedural and
27 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
28 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively

1 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
2 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
3 in connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement
4 Class, and Defendants participated in the negotiation and drafting of this Agreement and had
5 available to them the advice and assistance of independent counsel. As such, neither Plaintiff
6 nor Defendants may claim that any ambiguity in this Agreement should be construed against the
7 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
8 approved by the Court.

9 **B. Further Cooperation.**

10 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
11 and execute all documents, to seek the necessary approvals from the Court, and to do all things
12 reasonably necessary to consummate the Settlement as expeditiously as possible. The Parties
13 agree that they will not take any action inconsistent with this Agreement, including, without
14 limitation, encouraging Class Members to opt out of the Settlement. In the event the Court finds
15 that any Party has taken actions inconsistent with the Settlement, including, without limitation,
16 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
17 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
18 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
19 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
20 opt-outs and/or objections.

21 **C. Counterparts.**

22 The Agreement may be executed in one or more actual or non-original counterparts, all
23 of which will be considered one and the same instrument and all of which will be considered
24 duplicate originals.

25 **D. Authority.**

26 Each individual signing below warrants that he or she has the authority to execute this
27 Agreement on behalf of the party for whom or which that individual signs.

28 ///

E. No Third-Party Beneficiaries.

Plaintiff, Participating Class Members, Aggrieved Employees, Class Counsel, Defendant, and all Released Parties are direct beneficiaries of this Agreement, but there are no other third-party beneficiaries.

F. Deadlines Falling on Weekends or Holidays.

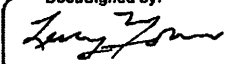
To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

G. Severability.

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

Dated: 11/3/2022, 2022


DocuSigned by:

 F27AE48F85CF401...
 LUCY MORENO
 Plaintiff and Class Representative

Dated: 11/4/2022, 2022


 SANTA PAULA POST ACUTE, LLC
 Defendant
 By:
 Its:

AGREED AS TO FORM ONLY:

Dated: 11/3/2022, 2022

DocuSigned by:

 7A6FE0456F4B461...
 DAVID D. BIBIYAN
 VEDANG J. PATEL
 Bibiyan Law Group, P.C.
 Counsel for Plaintiff Lucy Moreno

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 11/3/2022, 2022

DocuSigned by:

Jasmin Gill

5D32084043BA4D2...

JASMIN K. GILL

J. Gill Law Group, P.C.

Counsel for Plaintiff Lucy Moreno

Dated: 11/4/2022, 2022



JOSE-MANUEL A. DE CASTRO

DAVID G. LARMORE

LORI V. MINASSIAN

De Castro Law Group, P.C.

Counsel for Defendants Santa Paula Post
Acute, LLC and Dov E. Jacobs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL APPROVAL
FOR FINAL APPROVAL**

Lucy Moreno v. Santa Paula Post Acute, LLC, et al.
(County of Los Angeles, California Superior Court Case No. 21STCV12533)

As a current or former non-exempt, hourly-paid California employee for Santa Paula Post Acute, LLC you are entitled to receive money from a class action settlement.

Please read this Notice carefully. This Notice relates to a proposed settlement of class action litigation. If you are a Class Member, it contains important information about your right to receive a payment from the Settlement fund.

You have received this Notice of Class Action Settlement because the records of Santa Paula Post Acute, LLC ("Defendant") show you are a "Class Member," or a "Release Class Member," and therefore entitled to a payment from this class action Settlement. Class Members are all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees in the State of California, and did not sign any release with Defendant prior to this Settlement, at any time from July 26, 2018 through May 24, 2022 ("Class Period") unless Defendant elects to shorten the Class Period pursuant to the Agreement. Release Class Members are all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees in the State of California, and signed a release with Defendant in exchange for \$200, at any time during the Class Period, unless Defendant elects to shorten the Class Period pursuant to the Agreement.

- The settlement resolves a class action lawsuit, *Moreno v. Santa Paula Post Acute, LLC, et al.* (the "Lawsuit"), which alleges Defendant: (1) failed to pay overtime wages, (2) failed to pay minimum wages, (3) failed to provide legally-compliant meal and rest breaks under California law, (4) failed to provide legally compliant wage statements, (5) failed to timely pay all wages due upon termination or resignation, (6) failed to reimburse employees for business expenses, (7) violated Labor Code section 227.3, and (8) engaged in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiff also seek penalties under the California Labor Code Private Attorney Generals Act ("PAGA") pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699.
- On [REDACTED], the Los Angeles County Superior Court granted preliminary approval of this class action Settlement and ordered that all Class Members and Release Class Members be notified of the Settlement. The Court has not made any determination of the validity of the claims in the Lawsuit. Defendant vigorously denies the claims in the Lawsuit and contend that they fully complied with all applicable laws.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE PAYMENT	Get a payment, and give up your legal rights to pursue claims released by the settlement of the Lawsuit.
OPT OUT OF THE SETTLEMENT	Exclude yourself from the Settlement, get no payment for settlement of the class claims, and retain your legal rights to individually pursue the class claims that would otherwise be released by the settlement of the Lawsuit. If you worked from March 12, 2020 through and including the end of the Class Period ("PAGA Period") as a non-exempt, hourly-paid employee of Defendant, as well, then you will be deemed an "Aggrieved Employee" and you will still receive your share of the proceeds available from the settlement of the PAGA

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

	Released Claims, defined below, (your “Individual PAGA Payment”) regardless of whether you opt out of the class settlement.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Settlement Administrators, about why you object to the settlement and they will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you timely object, you or your attorney may also address the Court during the Final Approval hearing scheduled for [DATE AND TIME] in the Spring Street Courthouse of Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012.

The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at _____.m. on _____, in the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street, Department SS-12, Los Angeles, California 90012. You are not required to attend the Hearing, but you are welcome to do so.

Why Am I Receiving This Notice?

Defendant’s records show that you currently work, or previously worked, for Defendants as a non-exempt, hourly-paid employee in the State of California any time from July 26, 2018 through May 24, 2022 or the date that the number of Workweeks worked reaches 30,800 if Defendant elects to shorten the Class Period pursuant to the Agreement. You were sent this Class Notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to finally approve the settlement. If the Court approves the settlement and then any objections and appeals are resolved, a “Settlement Administrator” appointed by the Court will make the payments described in this Notice. This Notice explains the Lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

What Is This Case About?

Lucy Moreno was a non-exempt, hourly-paid employee for Defendant in California. She is the “Plaintiff” in this case and is suing on behalf of herself and Class Members for Defendant’s alleged failure to pay overtime wages, failure to pay minimum wages, failure to provide legally-compliant meal and rest breaks under California law, failure to provide compliant wage statements, failure to timely pay all wages due upon termination or resignation, failure to reimburse employees for business expenses, violation of Labor Code section 227.3, and engagement in unfair business practices. Based on these and other alleged Labor Code violations, Plaintiff also seeks to recover penalties under the California Labor Code Private Attorney Generals Act pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699.

Defendant denies all of the allegations made by Plaintiff and deny that they violated any law. The Court has made no ruling on the merits of Plaintiff’s claims. The Court has only preliminarily approved this Class Action Settlement. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

///

///

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

Summary of the Settlement Terms

Plaintiff and Defendant have agreed to settle this case on behalf of themselves and the Class Members for the Gross Settlement Amount of \$400,000.00, unless the Gross Settlement Amount is escalated pursuant to the Agreement. The Gross Settlement includes: (1) Administration Costs of up to \$9,500.00; (2) a service payment of up to \$7,500.00 to Plaintiff for her time and effort in pursuing this case and in exchange for a broader release of claims against Defendants; (3) up to 35% in attorneys' fees which, unless the Gross Settlement Amount is escalated pursuant to the Agreement, amounts to \$140,000.00 in attorneys' fees; (4) actual litigation costs up to \$25,000.00 to Class Counsel; and (5) payment allocated to PAGA penalties in the amount of \$20,000.00, \$15,000.00 of which will be payable to the Labor and Workforce Development Agency ("LWDA") and \$5,000.00 of which will be payable to Aggrieved Employees. After deducting these sums, a total of approximately \$198,000.00 will be available for distribution to Class Members ("Net Settlement Amount"), and an additional \$5,000.00 to Aggrieved Employees. In addition to the Gross Settlement, Defendants will separately pay all employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement.

Distribution to Class Members and Aggrieved Employees

Class Members and Release Class Members who do not opt out will receive a *pro rata* payment based on the number of verified actual weeks worked by Class Members and Release Class Members for Defendants during the Class Period ("Eligible Workweeks").

Specifically, Release Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Release Class Member by all Eligible Workweeks attributed to the Settlement Class, multiplied by the Net Settlement Amount, minus \$200.00 for payments they already received. Otherwise stated, the formula for a Release Class Member is: $[(\text{individual Eligible Workweeks} \div \text{total Settlement Class Eligible Workweeks}) \times \text{Net Settlement Amount}] - \200.00 .

If a Release Class Member is owed an amount less than \$200.00 under this Settlement, then that Release Class Member will not be issued any Individual Settlement Payment.

The remainder of the Net Settlement Amount, after deductions for payments to Release Class Members, shall be considered the "Remaining Net Settlement Amount." Class Members who are not Release Class Members, shall be paid from the Remaining Net Settlement Amount.

Class Members' payments will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Otherwise stated, the formula for a Class Member is: $(\text{individual's Eligible Workweeks} \div \text{total Class Members' Eligible Workweeks}) \times \text{Net Settlement Amount}$. In addition, Class Members or Release Class Members who worked during the PAGA Period will receive a pro rata share of the \$5,000 allocated as PAGA penalties, whether or not they opt out, based on the number of workweeks worked by the Class Member during the PAGA Period.

Defendant's records indicate that you worked [Eligible Workweeks] as a non-exempt, hourly-paid employee in California during the Class Period and [Eligible Pay Periods] during the PAGA Period. Based on these records, your estimated payment as a Class Member or Release Class Member would be [\$Estimated Award] and your estimated payment for PAGA civil penalties would be [\$Estimated Award]. If you believe this information is incorrect and wish to dispute it, you must mail a dispute to the Settlement Administrator no later than [RESPONSE DEADLINE]. Please include any documentation you have that you contend supports your dispute.

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

Tax Reporting

100% of the payments for PAGA penalties to Aggrieved Employees will be allocated as penalties reported on an IRS Form 1099; 20% of each Settlement Payment will be allocated as wages and reported on an IRS Form W-2; and 80% will be allocated as penalties and interest reported on an IRS Form 1099. This notice is not intended to provide legal or tax advice on your Settlement Share.

Your Options Under the Settlement

Option 1 – Do Nothing and Receive Your Payment

If you do not opt out, you are automatically entitled to your Settlement Check because you are a Class Member or Release Class Member. If you do not dispute your settlement share calculation and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, if you are a Class Member or Release Class Member, you do not need to take any action to receive the settlement payment set forth above.**

YOU SHOULD KEEP THE SETTLEMENT ADMINISTRATOR INFORMED OF ANY CHANGE IN YOUR ADDRESS. CHECKS WILL BE MAILED TO THE ADDRESS CURRENTLY IN DEFENDANT'S POSSESSION.

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. Within 7 days after expiration of the 180-day period, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be considered unpaid, unclaimed or abandoned funds and shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104 for use in the County of Los Angeles, State of California.

Class Members or Release Class Members who do not submit a valid and timely opt out (pursuant to Section 2 below), will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had upon final approval of this Settlement, entry of judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement Amount and Employer's Taxes pursuant to the Agreement.

"Released Claims" means all claims asserted in the Operative Complaint filed in the Action, and any and all claims that may be asserted against the Released Parties based on the factual allegations in the Operative Complaint filed in the Action, including, for the duration of the Class Period: (a) all claims for failure to pay minimum wages; (b) all claims for failure to pay overtime wages; (c) all claims for failure to provide compliant meal and/or rest periods or compensation in lieu thereof; (d) all claims for the failure to timely pay all wages due upon termination or resignation; (e) all claims for non-compliant wage statements; (f) all claims for failure to reimburse business expenses; (g) violation of Labor Code section 227.3; and (h) all claims asserted through California Business & Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint (the "Class Released Claims").

For Aggrieved Employees, the release includes, for the duration of the PAGA Period, all claims asserted in the PAGA Notice and alleged in the Operative Complaint, including all claims for civil penalties under PAGA arising out of Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 based on the factual allegations and Labor Code sections alleged to have been violated in the PAGA Notice and/or Operative Complaint, which includes, without limitation, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246 *et seq.*, 404, 432, 510, 512, 1102.5, 1174, 1174.5, 1194, 1197, 1197.5, 1198.5, 2802 and 2810.5 (the "PAGA Released Claims").

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

“Class Period” means the period from July 26, 2018 through May 24, 2022 or the date that the number of Workweeks worked reaches 30,800 if Defendants elect to shorten the Class Period pursuant to the Agreement.

“PAGA Period” means the period from July 26, 2018 through the end of the Class Period.

“Released Parties” shall mean Defendants Santa Paula and Dov E. Jacobs as well as each of Santa Paula’s past, present, and future respective affiliates, parents, subsidiaries, predecessors, successors, divisions, joint venturers and assigns, and each of these entities’ past or present directors, officers, employees, partners, members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and personal or legal representatives. Released Parties shall not include Defendants Vista Cove Care Center At Santa Paula, Inc. and Floyd Rhoades.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded from the Class. Your written request must expressly and clearly indicate that you do not want to participate in the Settlement, and you desire to be excluded from the Settlement. The written request for exclusion must include your name, your Social Security Number, your signature, and the following statement or something to its effect: “Please exclude me from the Settlement Class in the *Lucy Moreno v. Santa Paula Post Acute, LLC, et al.* matter”. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail to the address below.

The proposed settlement includes the settlement of the PAGA Released Claims. An employee may not request exclusion from the settlement of the PAGA Released Claims. Thus, if the court approves the settlement, then even if you request exclusion from the settlement, you will still receive an individual settlement share for the PAGA Released Claims and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining Class Released Claims.

**[Settlement Administrator]
[Mailing Address]**

The written request to be excluded from the Settlement must be postmarked or received by the Administrator not later than **[RESPONSE DEADLINE]**. If you exclude yourself from the Settlement then you will get no payment, and retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit.

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you may file an objection in writing stating why you object to the Settlement. Your objection must provide your full name, your address, the last 4 digits of your social security number, your signature, a statement of whether you plan to appear at the Final Fairness and Approval Hearing, and your reasons for why you think the Court should not approve the Settlement, along with any legal authority, if any, you assert supports your objection. Your objection must be mailed to the Administrator no later than **[RESPONSE DEADLINE]**. Please note that you cannot both object to the Settlement and exclude yourself. If the Court overrules your objection, you will be bound by the Settlement and will receive your Settlement Share.

Final Fairness Hearing

You may, if you wish, also appear at the Final Fairness and Approval Hearing set for _____ at _____ .m. in the Spring Street Courthouse of the Los Angeles County Superior Court, located at 312 North Spring Street,

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]

Department SS-12, Los Angeles, California 90012, and discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense.

Additional Information

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may visit www._____.com, call the Settlement Administrator at [PHONE NUMBER] or Class Counsel, who may be reached as follows:

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan
david@tomorrowlaw.com
Diego Aviles (habla Español)
diego@tomorrowlaw.com
Vedang J. Patel
vedang@tomorrowlaw.com
8484 Wilshire Boulevard, Suite 500
Beverly Hills, California 90211
Telephone: (310) 438-5555
Facsimile: (310) 300-1705

J. GILL LAW GROUP, P.C.

Jasmin K. Gill
jasmin@jkgilllaw.com
515 South Flower Street, Suite 1800
Telephone: (213) 429-6023 (habla Español)
Facsimile: (310) 728-2137

You may also refer to the pleadings, the Settlement Agreement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the Los Angeles County Superior Court, located at [ADDRESS], during regular business hours of each court day.

All inquiries by Class Members and Release Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
DEFENDANT, OR DEFENDANT'S ATTORNEYS WITH INQUIRIES.**

Questions? Contact the Settlement Claims Administrator toll free at [PHONE NUMBER]