

MELMED LAW GROUP P.C.
Jonathan Melmed (SBN 290218)
jm@melmedlaw.com
Laura Supanich (SBN 314805)
lms@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

[Additional Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

ZANDRA MARTINEZ, on behalf of herself and
all others similarly situated;

Plaintiff,

vs.

VICTORIAN CARE HOMES OF THE
MONTEREY PENINSULA, INC., a California
Corporation; VISIONARY HEALTH CARE
SERVICES, an unknown business formation; and
DOES 1 through 50, inclusive;

Defendants.

Case Number: 20CV002456

**SETTLEMENT AGREEMENT AND
RELEASE OF CLASS ACTION**

1 CHRISTOPHER E. PANETTA, Esq. (SBN 175127)
2 ELIZABETH R. LEITZINGER, Esq. (SBN 259677)
3 GLADYS RODRIGUEZ-MORALES, Esq. (SBN 276114)

FENTON & KELLER

4 A Professional Corporation
5 2801 Monterey-Salinas Highway
6 Post Office Box 791
7 Monterey, CA, 93942-0791
8 Telephone: (831) 373-1241
9 Facsimile: (831) 373-7219
10 Email: CPanetta@FentonKeller.com
11 Email: ELeitzinger@FentonKeller.com
12 Email: GMorales@FentonKeller.com

13 Attorneys for Defendant

14 VICTORIAN CARE HOMES OF THE MONTEREY PENINSULA, INC.

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION**

2 This Settlement Agreement and Release of Class Action (“Settlement Agreement”) is made and
3 entered into by: (1) Plaintiff Zandra Martinez (“Plaintiff”), individually and in her representative
4 capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf
5 of the State of California; and (2) Defendant Victorian Care Homes of the Monterey Peninsula, Inc.
6 (“Defendant”). This Settlement Agreement is subject to the approval of the Court, pursuant to
7 California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made for the sole purpose of
8 attempting to consummate settlement of the action on a class-wide basis subject to the following terms
9 and conditions. As detailed below, in the event the Court does not enter an order granting final approval
10 of this Settlement Agreement or the conditions precedent are not met for any reason, this Settlement
11 Agreement is void and of no force or effect whatsoever.

12 **1. DEFINITIONS**

13 As used in this Settlement Agreement, the following terms shall have the meanings specified
14 below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined
15 below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into
16 this definition section.

17 **1.1. ACTION**

18 “Action” shall mean the following civil action: *Zandra Martinez v. Victorian Care Homes of*
19 *the Monterey Peninsula, Inc.*, case number 20CV002456, filed on September 15, 2020, in the Superior
20 Court of California for the County of Monterey.

21 **1.2. ADMINISTRATIVE EXPENSES**

22 “Administrative Expenses” shall include all costs and expenses associated with and paid to the
23 third-party settlement administrator, which are estimated not to exceed \$9,000.00.

24 **1.3. APPLICABLE WAGE ORDER**

25 “Applicable Wage Order” shall mean the California Industrial Welfare Commission (“IWC”)
26 Wage Order applicable to the facts of this case, including IWC Wage Order 5-2001 and others that
27 may be applicable. (Cal. Code of Regs., tit. 8, § 11050.)

28 ///

1 **1.4. CLAIMS**

2 “Claims” shall mean the claims asserted in the Action.

3 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

4 “Class Attorney Fees and Expenses” shall mean the portion of the Gross Settlement Amount
5 attributable to attorney fees and litigation expenses. The Parties agree that the fee portion of the Class
6 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$66,666.67),
7 as approved by the Court, and the award of costs and expenses shall be up to an additional \$13,000.00.

8 **1.6. CLASS COUNSEL**

9 “Class Counsel” shall mean Jonathan Melmed and Laura Supanich of Melmed Law Group P.C.

10 **1.7. CLASS MEMBER**

11 “Class Member” shall mean any person who is a prospective member of the Settlement Class,
12 or, if such person is incompetent or deceased, the person’s legal guardian, executor, heir, or successor-
13 in-interest.

14 **1.8. CLASS NOTICE**

15 “Class Notice” shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
16 form of **Exhibit 1** attached hereto, or as otherwise approved by the Court, which is to be mailed to
17 Class Members along with the Share Form.

18 **1.9. CLASS PARTICIPANTS**

19 “Class Participants” shall mean all Class Members who do not timely request exclusion from
20 the Class Settlement.

21 **1.10. CLASS PERIOD**

22 “Class Period” shall mean the period from September 15, 2016, through preliminary approval
23 of class settlement.

24 **1.11. CLASS REPRESENTATIVE**

25 “Class Representative” shall mean Plaintiff Zandra Martinez.

26 **1.12. CLASS SETTLEMENT**

27 “Class Settlement” shall mean the settlement embodied in this Settlement Agreement, which is
28 subject to Court approval.

1 **1.13. COMPLAINT**

2 “Complaint” shall mean the currently-operative complaint in the Action.

3 **1.14. COURT**

4 “Court” shall mean the Superior Court of the County of Monterey.

5 **1.15. DEFENDANT**

6 “Defendant” shall mean Defendant Victorian Care Homes of the Monterey Peninsula, Inc..

7 **1.16. DEFENSE COUNSEL**

8 “Defense Counsel” shall mean the attorneys representing Defendant.

9 **1.17. EFFECTIVE DATE**

10 “Effective Date” shall be the date of final approval of the Settlement, if no objections by Class
11 Members have been filed or any objections have been withdrawn. If objections are filed and overruled,
12 and no appeal is taken of the Judgment, then the Effective Date will be sixty (60) days after service of
13 Notice of Entry of said Judgment. If an appeal is taken from the court overruling any objections, then
14 the Effective Date will be the date the appeal is withdrawn or after an appellate decision affirming the
15 final approval becomes final.

16 **1.18. EMPLOYEE’S TAXES AND REQUIRED WITHHOLDING**

17 “Employee’s Taxes and Required Withholding” shall mean the employee’s share of any and all
18 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal
19 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State
20 Unemployment Tax Act (SUTA) on the portion of any Class Participant’s Individual Settlement
21 Amount that constitutes wages. The Employee’s Taxes and Required Withholdings will be withheld
22 from and paid out of the Net Settlement Amount.

23 **1.19. EMPLOYER’S TAXES**

24 “Employer’s Taxes” shall mean and refer to Defendant’s share of payroll taxes (e.g.,
25 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
26 owed on the portion of any Class Participant’s Individual Settlement Amount that constitutes wages.
27 The Employer’s Taxes shall be separately paid by Defendant and shall not be paid from the Gross
28 Settlement Amount or Net Settlement Amount.

1 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

2 “Final Approval and Fairness Hearing” shall mean the final hearing held to ascertain the
3 fairness, reasonableness, and adequacy of the Class Settlement.

4 **1.21. GROSS SETTLEMENT AMOUNT**

5 “Gross Settlement Amount” is the agreed upon non-reversionary settlement amount totaling
6 \$200,000.00 to be paid by Defendant in full settlement of the Released Claims asserted in this case,
7 inclusive of the Administrative Expenses, the Employee’s Taxes and Required Withholdings, the Class
8 Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendant shall separately
9 pay its share of the Employer’s Taxes in addition to the Gross Settlement Amount on the portion of
10 each Individual Settlement Amount allocated as wages.

11 **1.22. HEARING ON PRELIMINARY APPROVAL**

12 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for preliminary
13 approval of the Class Settlement.

14 **1.23. INCENTIVE AWARD**

15 “Incentive Award” shall mean any additional monetary payment provided to the Class
16 Representative for her efforts and risks on behalf of the Settlement Class in this Action.

17 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

18 “Individual Settlement Amount” shall mean the amount which is ultimately distributed to each
19 Class Participant, less any Employee’s Taxes and Required Withholdings. The Individual Settlement
20 Amount does not include any portion of the PAGA Payment.

21 **1.25. NET SETTLEMENT AMOUNT**

22 “Net Settlement Amount” shall mean the Gross Settlement Amount minus: Administrative
23 Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount
24 allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004
25 (“PAGA”), codified at Labor Code sections 2698 through 2699.6, which are payable to the California
26 Labor and Workforce Development Agency (“LWDA”); and Plaintiff’s Incentive Award.

27 ///

28 ///

1 **1.26. OPT OUT**

2 “Opt Out” shall refer to the process of submitting a timely and valid request exclusion from the
3 Class Settlement in accordance with the terms of the Class Notice and no later than the Response
4 Deadline.

5 **1.27. OPT-OUTS**

6 “Opt-Outs” shall mean all persons who timely and validly request exclusion from the Class
7 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

8 **1.28. PAGA PAYMENT**

9 “PAGA Payment” means the penalties pursuant to PAGA that the Parties have agreed is a
10 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is
11 \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699
12 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
13 twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give
14 timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699,
15 subdivision (1)(2).

16 **1.29. PAGA PERIOD**

17 “PAGA Period” shall mean the period from December 14, 2019, through the date of preliminary
18 approval.

19 **1.30. PAGA SETTLEMENT CLASS**

20 “PAGA Settlement Class” shall mean all hourly non-exempt individuals employed in California
21 by Victorian Care Homes of the Monterey Peninsula, Inc. at any time during the PAGA Period.

22 **1.31. PARTIES**

23 “Parties” shall mean Plaintiff and Defendant.

24 **1.32. PLAINTIFF**

25 “Plaintiff” shall mean Plaintiff Zandra Martinez.

26 **1.33. PRELIMINARY APPROVAL DATE**

27 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
28 preliminarily approving this Settlement Agreement.

1.34. RELEASED CLAIMS

“Released Claims” shall mean all claims alleged in, or arising out of facts asserted in, the operative Second Amended Class Action and PAGA Representative Action Complaint against Defendant from September 15, 2016 through the date of preliminary approval. The released claims specifically include claims for: (1) failure to pay minimum wages (Labor Code §§ 1194, 1194.2, 1197); (2) failure to pay overtime wages (Labor Code §§ 510 and 1194); (3) failure to provide compliant rest periods and failure to pay rest period premiums (Labor Code § 226.7); (4) failure to provide compliant meal periods and pay meal period periods (Labor Code §§ 226.7 and 512); (5) failure to pay timely wages (Labor Code § 204); (6) failure to provide accurate and itemized wage statements (Labor Code §§ 226, 226.3, 1174, 1174.5); (7) failure to reimburse business expenses (Labor Code § 2802); (8) waiting time penalties (Labor Code §§ 201-203); (9) violation of Business and Professions Code § 17200 et seq.; and (10) PAGA penalties for Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198 and 2802. The Participating Class Members will not provide a full, general release of all claims, which includes a Civil Code § 1542 waiver.

No other claims are released other than those claims specifically plead in the Complaint, or arising out of facts asserted in the Complaint, or otherwise specifically identified herein. This Settlement Agreement will not release Defendant or the Released Parties from claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor does it release any claims, actions, or causes of action which may be possessed by Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and interpretive guidelines.

1.35. RELEASED PARTIES

“Released Parties” shall mean Defendant and all of Defendant’s past, present, or future subsidiaries, affiliates, entities, parent companies, divisions, insurers, partners, shareholders, members,

1 owners, directors, officers, executives, managers, employees, trustees, representatives, agents,
2 predecessors, successors, and assigns.

3 **1.36. RELEASING PARTIES**

4 “Releasing Parties” shall mean every Class Participant and all persons purporting to act on their
5 behalf or purporting to assert a claim under or through them, including, but not limited to, their
6 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
7 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
8 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

9 **1.37. RESPONSE DEADLINE**

10 “Response Deadline” shall mean the date sixty (60) days following the date on which the
11 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
12 Members may submit a request for exclusion and/or objection to Class Settlement.

13 **1.38. SETTLEMENT ADMINISTRATOR**

14 “Settlement Administrator” shall mean CPT Group, Inc. which the Parties have agreed will be
15 responsible for administration of the Class Settlement and related matters.

16 **1.39. SETTLEMENT CLASS**

17 “Settlement Class” shall mean all hourly non-exempt individuals employed in California by
18 Victorian Care Homes of the Monterey Peninsula, Inc. at any time between September 15, 2016
19 through preliminary approval of class settlement. Defendant represents that the Settlement Class
20 consists of approximately 270 Class Members that worked a total of approximately 7,591 workweeks
21 during the Class Period.

22 **1.40. SHARE FORM**

23 “Share Form” shall mean the *Class Action Settlement Share Form*, as set forth in the form of
24 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
25 Members along with the Class Notice.

26 ///

27 ///

28 ///

1 **2. FACTUAL AND PROCEDURAL BACKGROUND**

2 **2.1. PLAINTIFF’S CLAIMS**

3 Plaintiff, individually and in her representative capacity on behalf of the Settlement Class, and
4 as a private attorney general on behalf of the State of California, has alleged the following violations:

5 **(1)** failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2
6 and 1197, and the Applicable Wage Order; **(2)** failure to pay proper overtime wages in violation of
7 Labor Code sections 510, 1197, and 1198, and the Applicable Wage Order; **(3)** failure to provide
8 compliant rest periods and pay missed rest break premiums in violation of Labor Code section 226.7
9 and the Applicable Wage Order; **(4)** failure to provide compliant meal periods and pay missed meal
10 period premiums in violation of Labor Code sections 226.7 and 512, and the Applicable Wage Order;
11 **(5)** failure to maintain accurate employment records in violation of Labor Code section 1174;
12 **(6)** failure to pay timely wages during employment in violation of Labor Code sections 204, 210;
13 **(7)** failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202,
14 and 203; **(8)** failure to reimburse business expenses in violation of Labor Code section 2802; **(9)** failure
15 to provide complete and accurate wage statements in violation of Labor Code sections 226, 226.3 and
16 1174; **(10)** statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6);
17 and **(11)** violation of Business and Professions Code sections 17200 et seq.

18 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

19 Class Counsel has conducted significant informal discovery during the prosecution of the
20 Action. This discovery, investigation, and prosecution has included, among other things, **(a)** over a
21 dozen telephonic conferences with Plaintiff; **(b)** inspection and analysis of hundreds of pages of
22 documents and other information produced by Plaintiff and Defendant; **(c)** analysis of employment
23 data from a sample of Class Members; **(d)** an analysis of the legal positions taken by Defendant;
24 **(d)** investigation into the viability of class treatment of the claims asserted in the Action; **(e)** analysis
25 of potential class-wide damages, including information sufficient to understand Defendant’s potential
26 defenses to Plaintiff’s claims; **(f)** research of the applicable law with respect to the claims asserted in
27 the Complaint and the potential defenses thereto; and **(g)** assembling and analyzing of data for
28 calculating damages.

1 Class Counsel and the Class Representative have vigorously prosecuted this case, and
2 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
3 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
4 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
5 with an experienced employment law mediator, which culminated in a settlement in principal, the terms
6 of which are elaborated in this Settlement Agreement.

7 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**
8 **CLASS SETTLEMENT**

9 The document and data exchange in this matter, as well as discussions between counsel, have
10 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
11 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
12 conducted in this Action and the information exchanged by the Parties through pre-mediation
13 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
14 compromise the issues on a fair and equitable basis.

15 The Class Representative and Class Counsel believe that the claims, causes of action,
16 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
17 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
18 necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel
19 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
20 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
21 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
22 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
23 alleged in the Action.

24 The Class Representative and Class Counsel believe that the settlement set forth in this
25 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
26 independent review of this Settlement Agreement by the Court in the approval process will confirm
27 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
28 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff

1 and the Class Members.

2 **2.4. DEFENDANT'S DENIALS OF WRONGDOING AND LIABILITY**

3 Defendant has denied and continues to deny all allegations, claims, and contentions alleged by
4 Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing
5 or liability against it arising out of any of the conduct, statements, acts, or omissions alleged in the
6 Action. Defendant contends that it complied in good faith with California and federal wage and hour
7 laws and has dealt legally and fairly with Plaintiff and the Class Members.

8 Defendant further denies that, for any purpose other than settling this Action, these claims are
9 appropriate for class or representative treatment. Nonetheless, and without admission of fault,
10 Defendant has concluded that further proceedings in the Action would be protracted and expensive and
11 that it is desirable that the Action be fully and finally settled in the manner and upon the terms and
12 conditions set forth in this Settlement Agreement to dispose of burdensome and protracted litigation,
13 to permit the operation of Defendant's business without further expensive litigation and the distraction
14 and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken
15 into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the
16 Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be
17 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

18 **2.5. INTENT OF THE CLASS SETTLEMENT**

19 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order
20 approving the Class Settlement; (2) entry of judgment of the Action; and (3) discharge of Defendant
21 and the Released Parties from liability for all of the Released Claims.

22 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

23 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
24 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
25 conditional certification is appropriate because the Released Claims are being compromised without
26 need to establish the elements of those claims on which liability turns. The certification of the
27 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
28 Defendant, including without limitation, that certification of a class for trial purposes is or would be

1 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
2 treatment of any of the claims in the Action.

3 In the event that the Settlement Agreement is not finally approved by the Court, a Final
4 Effective Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered
5 null and void as set forth herein, then certification of the Settlement Class shall be automatically
6 vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding
7 determination that the requirements for certification of a class for trial purposes in this Action or in any
8 other action which have been, are or can be, satisfied. Further, if the Agreement does not reach a Final
9 Effective Date, Plaintiff agrees that Plaintiff will not argue, claim, reference, or otherwise raise any
10 preliminary approval of the Settlement Class in connection with any later proceeding before the Court.

11 **4. APPOINTMENT OF CLASS COUNSEL**

12 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
13 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
14 Class Settlement pursuant to this Settlement Agreement.

15 **5. CONSIDERATION**

16 **5.1. SETTLEMENT AMOUNT**

17 The Parties agree to settle this Action for the Gross Settlement Amount of \$200,000.00. There
18 shall be no reversion to Defendant. Defendant shall pay the Gross Settlement Amount in full. The Gross
19 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
20 consideration for the Class Settlement and will be made in full and final settlement of: the Released
21 Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive Award, the
22 PAGA Payment (and any payments to individual PAGA Class Members resulting from the PAGA
23 Payment), and any other obligation of Defendant under this Settlement Agreement (other than the
24 Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

25 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
26 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
27 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
28 as the Share Form, which shall identify the Class Member, the number of workweeks worked by each

1 Class Member (“Workweeks”), as well as the estimated amount of the Individual Settlement Amount
2 the Class Member can expect to receive once the Class Settlement becomes effective on the Effective
3 Date. Class Members shall be given the opportunity to challenge their Workweeks information.

4 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

5 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$7,500.00
6 for Zandra Martinez to acknowledge her efforts on behalf of the Settlement Class in this Action,
7 including assisting in the investigation and consulting with Class Counsel and providing crucial
8 documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive
9 Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from
10 the Gross Settlement Amount and shall be in addition to any distribution to which she may otherwise
11 be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered
12 wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such
13 payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award
14 approved by the Court and shall hold Defendant harmless from all liability with regard thereto.

15 **5.3. PAYMENT TO CLASS PARTICIPANTS**

16 Each Class Participant shall be eligible to receive payment of the Individual Settlement
17 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
18 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
19 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
20 Employee’s Taxes and Required Withholding with respect to his or her Individual Settlement Amount
21 and shall hold Defendant harmless from any and all liability with regard thereto.

22 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

23 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
24 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
25 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
26 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
27 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
28 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the

1 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
2 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class
3 member during the PAGA Period as a proportion of all pay periods worked by all members of the
4 PAGA Settlement Class.

5 **5.5. TAX TREATMENT AND PAYMENT**

6 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
7 Settlement Amounts for Class Participants (including any payments to the Class Representative but
8 exclusive of her Incentive Award), the Parties agree that 25% of each Individual Settlement Amount
9 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
10 W-2 for such payment to him or her), and 75% of each Individual Settlement Amount shall constitute
11 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
12 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total
13 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
14 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
15 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
16 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
17 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant
18 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
19 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
20 responsible for all other individual tax obligations.

21 With respect to the PAGA Payment and any payments made to individual members of the
22 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
23 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
24 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
25 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
26 to them.

27 ///

28 ///

1 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

2 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
3 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
4 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
5 benefits under, or any other monetary entitlement under Defendant’s sponsored benefit plans, policies,
6 or bonus programs. The payments made under the terms of this Settlement Agreement shall not be
7 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
8 form of compensation for the purposes of any of Defendant’s benefit plan, policy, or bonus program.
9 Defendant retains the right to modify the language of its benefits plans, policies, and bonus programs
10 to reflect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are
11 not for “weeks worked,” “weeks paid,” “weeks of service,” or any similar measuring term as defined
12 by applicable plans, policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or
13 any other purpose, and that additional contributions or benefits are not required by this Settlement
14 Agreement. Defendant does not consider the Class Settlement payments “compensation” for purposes
15 of determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs,
16 or any other plan sponsored by Defendant.

17 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

18 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
19 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
20 Settlement Amount (i.e., \$66,666.67) and the award of costs and expenses up to an additional
21 \$13,000.00. Defendant agrees to not object to any such fee, cost, or expense application in those
22 amounts.

23 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
24 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
25 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
26 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
27 Class Attorney Fees and Expenses or the Court’s award of Class Attorney Fees and Expenses is less
28 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class

1 Attorney Fees and Expenses awarded.

2 The Class Attorney Fees and Expenses approved by the Court shall reflect: **(a)** all work
3 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
4 represent the Settlement Class through the date of this Settlement Agreement; **(b)** all work to be
5 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
6 **(c)** all work to be performed and costs and expenses, if any, incurred in connection with administering
7 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and **(d)** may
8 be based on the “catalyst theory” and/or the “common fund doctrine.”

9 **6. SETTLEMENT ADMINISTRATION**

10 **6.1. COSTS AND EXPENSES**

11 All costs and expenses due to the Settlement Administrator in connection with its administration
12 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
13 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
14 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the
15 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
16 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
17 Amount, and is not expected to exceed \$9,000.00.

18 **6.2. PAYMENT BY DEFENDANT**

19 Defendant shall deposit the Gross Settlement Amount in a lump sum payment plus the
20 employer-side payroll taxes to the Settlement Administrator within seven (7) business days of the
21 Effective Date. In no event shall Defendant be obligated to pay or deposit with the Settlement
22 Administrator more than \$200,000.00 plus the Employer’s Taxes, except where the Escalator Provision
23 is triggered.

24 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

25 **7.1. THE SETTLEMENT ADMINISTRATOR**

26 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
27 (**Exhibit 1** and **Exhibit 2**, respectively) to Class Members; posting notice of entry of final order and
28 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries

1 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
2 determining individual payments to members of the PAGA Settlement Class; maintaining the
3 settlement funds in an appropriate interest-bearing account; preparing, administrating, and distributing
4 Individual Settlement Amounts to Class Participants; preparing, administrating, and distributing
5 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
6 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
7 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
8 reporting, including state and federal tax forms, if any.

9 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
10 Defense Counsel with summary information updating them as to the number of validated and timely
11 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
12 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
13 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
14 and Defense Counsel with proof of mailing of the Class Notice, without listing individual Class
15 Member names which the Settlement Administrator will file with the Court at the time Class Counsel
16 files its motion in support of the Court's Final Approval and Fairness Hearing.

17 No later than seven (7) days prior to the Final Approval and Fairness Hearing, the Settlement
18 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
19 information regarding: **(a)** the total amount of final Individual Settlement Amounts of each Class
20 Participant, without any identifying personal information; **(b)** the number of Class Participants to
21 receive such payments, and **(c)** the final number of Opt-Outs and objections.

22 Administrative Expenses are not to exceed \$9,000.00. The Administrative Expenses shall be
23 paid from the Gross Settlement Amount. Prior to the calculation and distribution of the Individual
24 Settlement Amounts, the Settlement Administrator shall calculate the total Administrative Expenses
25 through the conclusion of their services and such actual amount will be deducted from the Gross
26 Settlement Amount prior to the final calculation of the Individual Settlement Amounts. Defendant will
27 not be responsible for paying the additional fees and costs approved by the Court. Any additional third-
28 party settlement administrator fees and costs shall be paid from the Gross Settlement Amount.

1 **7.2. NOTICE TO CLASS MEMBERS**

2 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
3 after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with a list
4 of Class Members and members of the PAGA Settlement Class containing names, social security
5 numbers, dates of employment, last-known addresses, and phone numbers (the “Database”). The
6 Database shall be marked “Confidential – Settlement Administrator’s Eyes Only.” Class Counsel shall
7 not receive a copy of this list. The Settlement Administrator shall not share or disclose the Database
8 with anyone, including Class Counsel.

9 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
10 Administrator shall determine the number of workweeks worked by each Class Member, populate the
11 data for each Class Member accordingly, and send each Class Member the Class Notice via first-class,
12 United States mail. The Class Notice shall also contain an easily-understood statement alerting the
13 Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing
14 and waiving all Released Claims against the Released Parties.

15 The Class Notice will inform Class Members of their estimated share of the settlement and the
16 number of workweeks they worked during the Class Period. Class Members may dispute their
17 workweeks if they believe they worked more weeks in the Class Period than Defendant’s records show
18 by submitting information to the Settlement Administrator no later than sixty (60) days after being
19 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined
20 Response Deadline. The Settlement Administrator will jointly work with Class Counsel and Defense
21 Counsel to resolve the dispute in good faith. If Class Counsel and Defense Counsel cannot agree over
22 the workweeks to be credited, the Settlement Administrator shall make the final decision based on the
23 information presented by the Class Member and Defendant.

24 **7.3. OPT OUT PROCEDURE**

25 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate
26 in the Class Settlement and shall become Class Participants without having to submit a claim form or
27 take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or
28 postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state

1 the Class Member's name, the last four digits of the employee's social security number for
2 identification purposes, address, telephone number, and signature. The Opt Out request should state
3 something to the effect of:

4 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ZANDRA*
5 *MARTINEZ V. VICTORIAN CARE HOMES OF THE MONTEREY PENINSULA, INC.*
6 *LAWSUIT*. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
7 *SETTLEMENT CLASS*, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS
8 *SETTLEMENT OF THIS LAWSUIT* AND WILL NOT BE RELEASING ANY
9 *CLAIMS I MIGHT HAVE.*"

10
11 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. In the
12 event that, prior to the Response Deadline, any Class Notice mailed to a Class Member is returned as
13 having been undelivered by the United States Postal Service, the Settlement Administrator shall
14 perform a skip trace search and seek an address correction for such Class Members, and a second Class
15 Notice will be sent to any new or different address obtained. Such Class Members shall have an
16 additional fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt
17 Out if the Response Deadline would have otherwise passed prior to fourteen (14) days from the date
18 of the mailing of the second Class Notice.

19 It will be presumed that, if an envelope containing the Class Notice has not been returned within
20 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least seven (7)
21 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
22 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
23 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
24 specify the number of Class Members to whom the Class Notice was sent and the number of Class
25 Members to whom the Class Notice was not delivered, as well as information relating to the number
26 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

27 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
28 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency

1 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
2 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
3 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
4 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

5 Class Participants will be bound by the Release of Released Claims set forth in the definition
6 of “Released Claims” provided in this Settlement Agreement.

7 A request to Opt Out of the Class Settlement shall *not* serve to exclude the Class Member from
8 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
9 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
10 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

11 **7.4. OBJECTION PROCEDURE**

12 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
13 Any Class Member who wishes to object to the Class Settlement must file with the Court, with a copy
14 mailed to the Settlement Administrator no later than the Response Deadline, a written objection. Only
15 Class Participants may object to the Settlement. The objection should include the Class Member’s
16 name, the last four digits of the Class Member’s social security number, address, telephone number,
17 dates of employment with Defendant, the case name and number and must set forth, in clear and concise
18 terms, a statement of the reasons why the objector believes that the Court should find that the proposed
19 Class Settlement is not in the best interest of the Settlement Class and the reasons why the Class
20 Settlement should not be approved, including the legal and factual arguments supporting the objection.
21 If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through
22 an attorney, they may do so. The Settlement Administrator will promptly serve copies of any objection
23 or notice of intention to appear on Class Counsel and Defense Counsel. Class Members wishing to
24 make an objection may appear at the Final Approval and Fairness Hearing, either in person or through
25 a lawyer retained at their own expense.

26 **7.5. NOTICE OF FINAL JUDGMENT**

27 Within ten (10) days after the Court has held a Final and Fairness Approval Hearing and entered
28 a final order certifying the Class for settlement purposes only and approving the Class Settlement, the

1 Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of
2 the California Rules of Court, by posting a copy of said order and final judgment on its website at a
3 web address to be included in the Class Notice.

4 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

5 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

6 The claims of all Class Members are settled for the Gross Settlement Amount of \$200,000.00,
7 which will be allocated as follows:

- 8 1. The Administrative Expenses, estimated not to exceed \$9,000.00;
- 9 2. Class Counsel’s attorney fees not to exceed \$66,666.67;
- 10 3. Class Counsel’s litigation costs and expenses not to exceed \$13,000.00;
- 11 4. The Incentive Award, not to exceed \$7,500.00; and
- 12 5. PAGA Payment to LWDA of \$15,000.00.

13 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
14 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
15 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement
16 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
17 amounts in each category.

18 **8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR**
19 **CLASS PARTICIPANTS**

20 Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net
21 Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a
22 “checks cashed” basis based on the proportional number of weeks worked by each Class Member
23 during the Class Period. Each Class Member’s number of workweeks will be derived from the hire and
24 termination dates and payroll records kept by Defendant. For purposes of calculating the number of
25 workweeks worked by a Class Member during the Class Period, a workweek includes any hours or
26 days worked during the workweek.

27 Defendant will provide the Settlement Administrator with any information reasonably
28 necessary to perform the calculation of number of workweeks for each Class Member, and any other

1 reasonably required information the Settlement Administrator requests to perform the calculations
2 required under this Settlement Agreement. Defendant shall have no responsibility for deciding the
3 validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement
4 Agreement, shall have no involvement in or responsibility for the determination or payment of
5 Employee's Taxes and Required Withholding, and shall have no liability for any errors made with
6 respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator
7 will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the
8 Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants
9 represent and understand that they shall be solely responsible for any and all tax obligation associated
10 with their respective Individual Settlement Amounts and Incentive Awards.

11 **8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF**
12 **THE PAGA SETTLEMENT CLASS**

13 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
14 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
15 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
16 is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section
17 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
18 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

19 The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed
20 to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular
21 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
22 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
23 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
24 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendant
25 harmless from any and all liability with regard thereto.

26 Defendant will provide the Settlement Administrator with any information reasonably
27 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
28 member, and any other reasonably required information the Settlement Administrator requests to

1 perform the calculations required under this Settlement Agreement. Defendant shall have no
2 responsibility for deciding the validity of the individual payment amounts allocated to each member of
3 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
4 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
5 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
6 Taxes and Required Withholding.

7 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
8 obligation associated with their respective shares of the PAGA Payment.

9 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

10 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
11 approved by the Court no later than twenty (20) days after the Effective Date.

12 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

13 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
14 Court no later than twenty (20) days after the Effective Date.

15 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

16 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
17 due to it and approved by the Court no later than twenty (20) days after the Effective Date.

18 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
19 **INDIVIDUAL SETTLEMENT AMOUNTS**

20 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
21 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
22 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
23 last-known address no later than twenty (20) days after the Effective Date. If the Settlement
24 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
25 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
26 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
27 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
28 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the

1 remaining monetary obligations have been calculated and accounted for.

2 Within two hundred ten (210) days of mailing the Individual Settlement Amounts to Class
3 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
4 declaration of payment and non-cashed settlement checks pursuant to paragraph 8.8. In the event that
5 any Class Participant is deceased, payment shall be made payable to the estate of that Class Member
6 and delivered to the executor or administrator of that estate, unless the Settlement Administrator has
7 received an affidavit or declaration pursuant to California Probate Code section 13101, in which case
8 payment shall be made to the affiant(s) or declarant(s).

9 **8.8. NON-CASHED SETTLEMENT CHECKS**

10 Any funds associated with checks that have not been cashed within one hundred eighty (180)
11 days, will become void and the Individual Settlement Amount associated with the uncashed check will
12 be distributed pursuant to Code of Civil Procedure section 384 to CASA of Monterey County.

13 **8.9. DISPUTES REGARDING CLASS MEMBER WORKWEEKS DATA OR**
14 **PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

15 Class Member Workweeks and the corresponding Individual Settlement Amount shall be
16 calculated using the employment and payroll records of Defendant, which presumptively shall be
17 deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome
18 that presumption, any Class Member objecting to the accuracy of the number of Workweeks or amount
19 of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other
20 written employment records, to the Settlement Administrator. Each Class Member may dispute the
21 number of Workweeks or their estimated Individual Settlement Amount contained on their Class
22 Notice (“Workweeks Dispute”). Any such Workweeks Dispute must be mailed or faxed to the
23 Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response
24 Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for
25 Defendant, shall inform Class Counsel of the dispute without disclosing the identity of the Class
26 Member making the dispute, and shall immediately attempt to resolve all such disputes directly with
27 relevant Class Members with the assistance of Defendant, Defense Counsel, and Class Counsel. If the
28 dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-

1 appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes
2 prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement
3 Amount has been distributed, the initial calculation shall stand (as Defendant shall be under no
4 obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement
5 Agreement).

6 **9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT**

7 **9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT**

8 The Class Settlement and conditional class certification shall be considered null and void, and
9 neither the Class Settlement, conditional class certification, nor any of the related negotiations or
10 proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the
11 same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with
12 the Court, if any of the following occur: **(a)** the Court should for any reason fail to approve this
13 Settlement Agreement in the form agreed to by the Parties; **(b)** the Court should for any reason fail to
14 enter a judgment with prejudice of the Action, or **(c)** the approval of the Class Settlement and judgment
15 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
16 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

17 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR**
18 **PROVISION**

19 Defendant has represented that the estimated workweeks during the class period is 7,591. In the
20 event the actual workweeks exceed this amount by more than 15%, Defendant shall pay an additional
21 sum necessary to increase the Settlement Amount by the percentage by which the workweeks exceed
22 15% of the represented workweeks (e.g., if the actual workweeks is 20% higher than the represented
23 workweeks, the Settlement Amount shall be increased by 5%).

24 Defendant may in its discretion withdraw from this Settlement if more than 10% of the Class
25 Members opt out of the Settlement. In that event, the Settlement shall be considered void ab initio and
26 shall be of no force or effect whatsoever and shall not be referred to or utilized for any purpose
27 whatsoever. Plaintiff is prohibited from opting out of this Settlement.

28 ///

1 **9.3. INVALIDATION**

2 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
3 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
4 of the Class Settlement are to remain in full force and effect.

5 **9.4. STAY ON APPEAL**

6 In the event of a timely appeal from the approval of the Class Settlement and judgment, the
7 judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount
8 or take any other actions required by this Settlement Agreement until all appeal rights have been
9 exhausted by operation of law.

10 **10. MOTIONS FOR COURT APPROVAL**

11 **10.1. PRELIMINARY APPROVAL**

12 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
13 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
14 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary
15 approval in a timely fashion.

16 **10.2. FINAL APPROVAL**

17 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
18 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
19 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
20 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
21 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
22 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
23 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
24 be required for the Court's determination.

25 **11. RELEASES AND WAIVERS**

26 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

27 Upon the Effective Date, the Releasing Parties shall be deemed to each release the Released
28 Parties, and each of them, of and from any and all Released Claims arising during the Class Period. It

1 is the desire of the Parties and the Releasing Parties to fully, finally, and forever settle, compromise,
2 and discharge the Released Claims. Each of the Releasing Parties, including each Class Participant,
3 will be bound by the release of Released Claims as a result of the Class Settlement and to the terms of
4 the final judgment and the satisfaction of such judgment.

5 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
6 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
7 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged
8 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement
9 Amount. That section provides in pertinent part as follows:

10 “An employer shall not require the execution of a release of a claim or right on account
11 of wages due, or to become due, or made as an advance on wages to be earned, unless
12 payment of those wages has been made.”
13

14 **11.2. RELEASE OF CLAIMS BY PLAINTIFF**

15 Plaintiff, on behalf of herself and her dependents, heirs and assigns, beneficiaries, devisees,
16 legatees, executors, administrators, agents, trustees, conservators, guardians, personal representatives,
17 and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect,
18 or any other type or in any other capacity, shall and does hereby forever release, discharge and agree
19 to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
20 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
21 demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at
22 law or in equity, which she may now have or may have after the signing of this Settlement Agreement,
23 arising out of or in any way connected with her employment with Defendant including, the Released
24 Claims, claims that were asserted or could have been asserted in the Complaint, and any and all
25 transactions, occurrences, or matters between the Parties occurring prior to the date this Settlement
26 Agreement is fully executed. Without limiting the generality of the foregoing, this release shall include,
27 but not be limited to, any and all claims under: **(a)** the Americans with Disabilities Act; **(b)** Title VII
28 of the Civil Rights Act of 1964; **(c)** the Civil Rights Act of 1991; **(d)** 42 U.S.C. § 1981; **(e)** the Age

1 Discrimination in Employment Act; **(f)** the Fair Labor Standards Act; **(g)** the Equal Pay Act; **(h)** the
2 Employee Retirement Income Security Act, as amended; **(i)** the Consolidated Omnibus Budget
3 Reconciliation Act; **(j)** the Rehabilitation Act of 1973; **(k)** the Family and Medical Leave Act; **(l)** the
4 Civil Rights Act of 1966; **(m)** the California Fair Employment and Housing Act; **(n)** the California
5 Constitution; **(o)** the California Labor Code; **(p)** the California Government Code; **(q)** the California
6 Civil Code; and **(r)** any and all other federal, state, and local statutes, ordinances, regulations, rules,
7 and other laws, and any and all claims based on constitutional, statutory, common law, or regulatory
8 grounds as well as any other claims based on theories of wrongful or constructive discharge, breach of
9 contract or implied contract, fraud, misrepresentation, promissory estoppel, or intentional infliction of
10 emotional distress, negligent infliction of emotional distress, or damages under any other federal, state,
11 or local statutes, ordinances, regulations, rules, or laws. This release is for any and all relief, no matter
12 how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses,
13 compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain
14 and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees
15 to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs
16 arising out of the matters released in this Settlement Agreement.

17 Plaintiff specifically acknowledges that she is aware of and familiar with the provisions of
18 California Civil Code section 1542, which provides as follows:

19 **“A general release does not extend to claims that the creditor or releasing party**
20 **does not know or suspect to exist in his or her favor at the time of executing the**
21 **release and that, if known by him or her, would have materially affected his or her**
22 **settlement with the debtor or released party.”**
23

24 Plaintiff, being aware of California Civil Code section 1542, hereby expressly waives and
25 relinquishes all rights and benefits she may have under section 1542 as well as any other statutes or
26 common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or
27 different from those which she now knows or believes to be true with respect to the subject matter of
28 all the claims referenced herein, but agrees that, upon the Effective Date, Plaintiff shall and hereby

1 does fully, finally, and forever settle and release any and all claims against the Released Parties, known
2 or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
3 been asserted upon any theory of law or equity without regard to the subsequent discovery of existence
4 of such different or additional facts.

5 **11.3. CIRCULAR 230 DISCLAIMER**

6 Each party to this Settlement Agreement (for purposes of this section, the “Acknowledging
7 Party”; and each party to this Agreement other than the Acknowledging Party, an “Other Party”)
8 acknowledges and agrees that **(1)** no provision of this Settlement Agreement, and no written
9 communication or disclosure between or among the parties or their attorneys and other advisers, is or
10 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
11 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
12 C.F.R. Part 10); **(2)** the Acknowledging Party **(a)** has relied exclusively upon her or its own
13 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
14 Agreement, **(b)** has not entered into this Settlement Agreement based upon the recommendation of any
15 other party or any attorney or advisor to any other party, and **(c)** is not entitled to rely upon any
16 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that
17 may be imposed on the Acknowledging Party; and **(3)** no attorney or advisor to any other party has
18 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies
19 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
20 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
21 Settlement Agreement.

22 **12. DUTIES OF THE PARTIES**

23 **12.1. MUTUAL FULL COOPERATION**

24 The Parties agree to cooperate fully with one another to accomplish and implement the terms
25 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
26 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
27 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
28 by this Settlement Agreement and any other efforts that may become necessary by court order or

1 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
2 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendant and
3 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
4 this Settlement Agreement.

5 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

6 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
7 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
8 legal challenge, whether by appeal or collateral attack.

9 **12.3. DUTIES PRIOR TO COURT APPROVAL**

10 Prior to Class Counsel seeking preliminary approval of the Settlement Agreement, Class
11 Counsel and Defense Counsel will stipulate for leave to file a Second Amended Class Complaint and
12 Class Counsel shall promptly file a Second Amended Class Action Complaint adding a cause of action
13 for failure to timely pay wages upon separation of employment pursuant to Labor Code sections 201,
14 202 and 203. Thereafter, Class Counsel shall promptly submit this Settlement Agreement to the Court
15 for preliminary approval and determination by the Court as to its fairness, adequacy, and
16 reasonableness. Promptly upon execution of this Settlement Agreement, Class Counsel shall apply to
17 the Court for the entry of a preliminary order scheduling a hearing on the question of whether the
18 proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Class
19 Members, approving as to form and content the proposed Class Notice and Share Form attached hereto
20 as **Exhibit 1** and **Exhibit 2**, respectively, and directing the mailing of the Class Notice to Class
21 Members. In its sole discretion, Defendant may file a non-opposition to Plaintiff's motion for approval
22 of the Settlement Agreement.

23 **13. MISCELLANEOUS PROVISIONS**

24 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

25 Pending Court approval and other than as provided herein, if any of the conditions set forth in
26 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
27 either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and may not be
28 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.

1 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
2 conditional class certification shall be considered void, and neither the Settlement Agreement,
3 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force
4 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
5 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
6 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
7 fees and costs actually incurred.

8 **13.2. DIFFERENT FACTS**

9 The Parties acknowledge that, except for matters expressly represented herein, the facts in
10 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
11 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
12 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
13 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
14 and binding despite such difference.

15 **13.3. NO PRIOR ASSIGNMENTS**

16 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
17 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
18 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
19 except as set forth herein.

20 **13.4. NON-ADMISSION**

21 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
22 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
23 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
24 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
25 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
26 and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or
27 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
28 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to

1 claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
2 an admission by Defendant that the Action was properly brought as a class or representative action
3 other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each
4 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
5 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
6 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
7 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
8 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the
9 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of
10 any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in
11 any court, administrative agency, or other tribunal.

12 **13.5. NON-EVIDENTIARY USE**

13 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
14 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
15 individual who requested to be excluded from the Settlement Class), Defendant, or its, her, his, or their
16 respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
17 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendant and
18 the Released Parties to prove or defend against any claim released herein by any Class Member in any
19 judicial, quasi-judicial, administrative, or governmental proceeding.

20 **13.6. CONFIDENTIALITY, MEDIA, OR PRESS**

21 Other than information necessary to secure Court approval of this Settlement Agreement, the
22 Parties agree to keep confidential all matters relative to this Settlement Agreement, including the facts
23 and circumstances leading up to it. Plaintiff and Defendant, and their respective counsel, recognize,
24 accept, and agree that the Parties to this Settlement Agreement desire that the terms of this Settlement
25 Agreement, the fact of the Class Settlement embodied in this Settlement Agreement, the disposition of
26 the Action, the Action, and all matters relating to the litigation of the Action, including discovery
27 proceedings therein, and evidence obtained during the course of the Action, shall be kept confidential
28 and are not be discussed with or presented to the media or press. If asked about the dispute between

1 the Partis, the Parties shall provide no other statement than “the matter has been resolved.” The Parties
2 may, however, discuss the terms of this Settlement Agreement with their spouses, attorneys, financial
3 advisors, tax advisors, and accountants, or upon a valid court order, at which time the individual
4 receiving the information about the terms of this Settlement Agreement shall be informed the
5 Settlement Agreement, including the facts and circumstances leading up to it are confidential, and the
6 individual may not reveal or disclosure to any third-party the terms of the Settlement Agreement,
7 including the facts and circumstances leading up to it.

8 **13.7. NON-RETALIATION**

9 Defendant understands and acknowledges that it has a legal obligation to not retaliate against
10 any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the Class
11 Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement
12 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
13 or indirectly, from participating in, opting out, or objecting to the Class Settlement. None of the Parties,
14 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
15 indirectly, to Opt Out of the Class Settlement.

16 **13.8. CONSTRUCTION**

17 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
18 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
19 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
20 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
21 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
22 next business day.

23 **13.9. GOVERNING LAW**

24 This Settlement Agreement is intended to and shall be governed by the laws of the State of
25 California, without regard to conflict of law principles, in all respects, including execution,
26 interpretation, performance, and enforcement.

27 ///

28 ///

1 **13.10. NOTICES**

2 Except for Class Member notices required to be made by the Settlement Administrator, all
3 notices or other communications required or permitted under this Settlement Agreement shall be in
4 writing and shall be sufficiently given if delivered in person to the party's counsel by U.S. certified
5 mail, postage prepaid, e-mail, or overnight delivery addressed to the address of the party's counsel as
6 set forth in this Settlement Agreement.

7 **13.11. CAPTIONS AND INTERPRETATIONS**

8 Section titles or captions contained herein are inserted as a matter of convenience and for
9 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
10 or any provision thereof.

11 **13.12. MODIFICATION**

12 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
13 by the Parties (or the Parties' on their behalf) and approved by the Court. This Settlement Agreement
14 may not be discharged except by performance in accordance with its terms or by a writing signed by
15 the Parties.

16 **13.13. INTEGRATION CLAUSE**

17 This Settlement Agreement contains the entire agreement between the Parties relating to the
18 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
19 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
20 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
21 Settlement Agreement may be waived except in writing as provided above.

22 **13.14. SUCCESSORS AND ASSIGNS**

23 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
24 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
25 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
26 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
27 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
28 successors, and assigns.

1 **13.15. CORPORATE SIGNATORIES**

2 Any person executing this Settlement Agreement or any such related document on behalf of a
3 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
4 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
5 this Settlement Agreement or any such related document.

6 **13.16. EXECUTION IN COUNTERPARTS**

7 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
8 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
9 have the same force and effect as if all Settling Parties had signed the same instrument.

10 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

11 Except as otherwise specifically provided for herein, each party shall bear her or its own
12 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
13 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

14 **13.18. ACTION TO ENFORCE AGREEMENT**

15 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
16 entitled to recover her or its attorney fees and costs. A party claiming a breach will give notice of the
17 claimed breach to the other party, along with a 30-day opportunity to cure the breach.

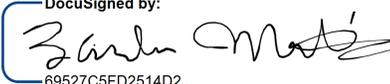
18 **14. EXECUTION**

19 The Parties and their counsel have executed this Settlement Agreement on the date below their
20 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the
21 date of the latest signature.

22 **APPROVAL AND EXECUTION BY PARTIES**

23 **CLASS REPRESENTATIVE:**

24 Dated: 11/16/2021

DocuSigned by:

69527C5FD2514D2...
Zandra Martinez
Plaintiff and Class Representative

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

DEFENDANT:

Dated: _____

Victorian Care Homes of the Monterey Peninsula, Inc.

By: Julie Conners

Title: Chief Executive Officer

APPROVED AS TO FORM BY COUNSEL

CLASS COUNSEL:

Dated: 11/30/2021

Melmed Law Group P.C.

DocuSigned by:
Jonathan Melmed

52FF1669ED7D4C2...
Jonathan Melmed
Attorneys for Plaintiffs

DEFENDANT'S COUNSEL:

Dated: _____

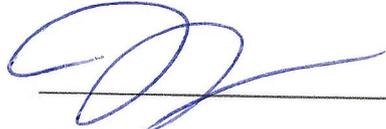
FENTON & KELLER

Elizabeth R. Leitzinger, Esq.
Attorneys for Defendant

1 **DEFENDANT:**

2
3 Dated: 11/9/21

Victorian Care Homes of the Monterey Peninsula, Inc.



6 By: Julie Conners

7 Title: Chief Executive Officer

8
9 **APPROVED AS TO FORM BY COUNSEL**

10 **CLASS COUNSEL:**

11
12 Dated: _____

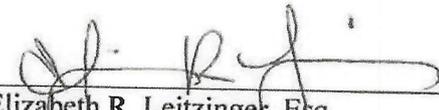
Melmed Law Group P.C.

13
14 _____
15 Jonathan Melmed
16 Attorneys for Plaintiffs

17 **DEFENDANT'S COUNSEL:**

18 Dated: 11/9/2021

FENTON & KELLER

19
20 
21 _____
22 Elizabeth R. Leitzinger, Esq.
23 Attorneys for Defendant

24
25
26
27
28