

1 Matthew J. Matern (CSB #159798)  
2 Mikael H. Stahle (CSB #182599)  
3 **MATERN LAW GROUP, PC**  
4 1230 Rosecrans Avenue, Suite 200  
5 Manhattan Beach, CA 90266  
6 Telephone: (310) 531-1900  
7 Facsimile: (310) 531-1901  
8 mmatern@maternlawgroup.com  
9 mstahle@maternlawgroup.com

10 Attorneys for Plaintiff  
11 LAURA DELGADO individually,  
12 and on behalf of others similarly  
13 situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF CONTRA COSTA**

16 LAURA DELGADO, individually, and on  
17 behalf of others similarly situated

18 20 Plaintiff,

19 vs.

20 ORINDA CARE CENTER, LLC, a California  
21 limited liability company and DOES 1 through  
22 50, inclusive,

23 Defendants.

Case No. C20-02646

[Assigned for all Purposes to the Honorable  
Edward G. Weil, Dept. 39]

**JOINT STIPULATION OF CLASS AND  
REPRESENTATIVE ACTION  
SETTLEMENT AND RELEASE**

Action Filed: December 29, 2020

Trial Date: None set

1 IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiff Laura  
2 Delgado on her own behalf and on behalf of all Members of the Settlement Class, as defined  
3 below, on the one hand, and Defendant Orinda Care Center, LLC in the above-captioned Action  
4 originally filed in the Superior Court of California, County of Contra Costa, Case No. C20-02646  
5 (the "Action") that this Joint Stipulation of Class and Representative Action Settlement and  
6 Release resolves all claims that were asserted or could have been asserted against Defendant  
7 pertaining to the claims in the Action, subject to the approval of the Court.

8 **I. DEFINITIONS**

9 1. **Administrative Costs.** The term "Administrative Costs" shall refer to all  
10 administrative costs of settlement, including cost of Class Notice, claims administration, and any  
11 fees and costs incurred or charged by the Settlement Administrator in connection with the  
12 execution of its duties under this Agreement.

13 2. **Agreement.** The term "Agreement" is used herein to mean this Joint Stipulation  
14 of Class and Representative Action Settlement and Release.

15 3. **Class Counsel.** The term "Class Counsel" shall refer to the law firm of Matern  
16 Law Group, PC and all the lawyers of that firm, specifically including but not limited to Matthew  
17 J. Matern and Mikael H. Stahle, counsel for Plaintiff and the Settlement Class.

18 4. **Class Notice.** The term "Class Notice" shall refer to the Notice of Class Action  
19 Settlement, substantially in the form attached hereto as "**Exhibit A**" which the Settlement  
20 Administrator shall mail to each Member of the Settlement Class and PAGA Group explaining  
21 the terms of this Agreement.

22 5. **Class Period.** The term "Class Period" shall refer to the time period from October  
23 19, 2019 through January 19, 2022.

24 6. **Compensable Workweeks.** The term "Compensable Workweeks" shall refer to  
25 the total number of weeks during which a Member of the Settlement Class or PAGA Group  
26 worked for Defendant as an hourly non-exempt employee in the State of California during either  
27 the Class Period (i.e. for the Settlement Class) or the PAGA Period (i.e. for the PAGA Group),  
28 based on Defendant's records. Using class information provided by Defendant, the Settlement

1 Administrator will calculate the number of workweeks by calculating the number of days each  
2 Settlement Class member was employed by Defendant in California as an hourly paid, non-  
3 exempt employee during the Class Period, dividing by seven (7), and rounding up to the nearest  
4 whole number. A workweek will be calculated to exclude any non-work time such as vacation,  
5 sick, disability or other leave, or other non-work time.

6 7. **Court.** The term “Court” as used herein means the Superior Court of California,  
7 County of Contra Costa.

8 8. **Defendant.** The term “Defendant” as used herein means Orinda Care Center,  
9 LLC.

10 9. **Effective Date.** The term “Effective Date” as used herein means the date of entry  
11 of judgment following final approval of the Settlement, if no valid objections to the Settlement  
12 have been submitted to the Court; if one or more valid objections have been submitted Court, the  
13 Effective Date shall be the date when any and all such objections have been withdrawn or any  
14 appeal therefrom been dismissed or resulted in affirmance of the judgment following final  
15 approval of the Settlement. If an appeal is filed, the Effective Date shall be the date the judgment  
16 is final and no longer subject to appeal.

17 10. **Final Approval.** The term “Date of Final Approval” (or just “Final Approval”)  
18 shall refer to the date the final formal judgment approving this Agreement is entered by the Court.

19 11. **Action.** The term “Action” as used herein means the action entitled *Laura*  
20 *Delgado et al. v. Orinda Care Center, LLC, et al.*, filed in the Superior Court of California  
21 County of Contra Costa, Case No. C20-02646.

22 12. **Plaintiff.** The term “Plaintiff” as used herein means Laura Delgado.

23 13. **Net Settlement Amount.** The term “Net Settlement Amount” shall mean the net  
24 amount available for payment of the Individual Settlement Payments and refer to the Settlement  
25 Amount less the amounts attributable to Administrative Costs, any award of reasonable attorneys’  
26 fees and litigation costs, any awarded enhancement to Plaintiff, and the PAGA Allocation, as  
27 provided in Sections VIII, XII, XIII, XV, respectively. All employee-side taxes owed by  
28 Settlement Class Members as a result of payments under this Agreement shall be deducted from

1 their Individual Settlement Payments, in accordance with applicable law.

2       14.    **Individual Settlement Payments.** The term “Individual Settlement Payment(s)”  
3 shall refer to the pro-rata individual settlement payments made to the Participating Settlement  
4 Class Members from the Net Settlement Amount based on the number of Compensable  
5 Workweeks worked during the Class Period as determined by personnel data in the possession of  
6 Defendant, including wages, penalties and interest, and shall be supplemented by any portion of  
7 the requested attorneys’ fees and litigation costs, Administrative Costs, and enhancement to  
8 Plaintiff which are not approved by the Court.

9       15.    **Notice of Objection:** The term “Notice of Objection” shall refer to a written  
10 objection, signed by a Settlement Class Member or their authorized representative, and timely  
11 sent to the Settlement Administrator as evidence of their intent to object to the terms of the  
12 Agreement, and their stated grounds therefore. To be valid, the Notice of Objection must state:  
13 (1) the full name of the individual; (2) the dates of employment of the individual; (3) the last four  
14 digits of the individual’s Social Security number; and (4) the factual and legal bases for the  
15 objection, attaching any supporting documents.

16       16.    **PAGA Allocation.** The term “PAGA Allocation” shall refer to the Forty  
17 Thousand Dollars (\$40,000.00) portion of the Settlement Amount intended to resolve any and all  
18 claims of the California Labor & Workforce Development Agency (LWDA) for civil penalties  
19 under California’s Labor Code Private Attorneys General Act (PAGA). The PAGA Allocation is  
20 comprised of the PAGA Distribution and the PAGA Payment.

21       17.    **PAGA Distribution.** The term “PAGA Distribution” shall refer to the 25-percent  
22 portion of the PAGA Allocation that shall be distributed in pro-rata individual payments to the  
23 Members of the PAGA Group based on their respective Compensable Workweeks.

24       18.    **PAGA Group.** The term “PAGA Group” shall refer to all persons who are or were  
25 employed by Defendant as non-exempt employees in the State of California at any time during  
26 the PAGA Period.

27       19.    **PAGA Payment.** The term “PAGA Payment” shall refer to the 75-percent portion  
28 of the PAGA Allocation that shall be paid to the LWDA.

1           20.    **PAGA Period.** The term “PAGA Period” shall refer to the time period from  
2 October 19, 2019 through January 19, 2022.

3           21.    **Participating Settlement Class Member.** The term “Participating Settlement  
4 Class Member” shall refer to each Member of the Settlement Class who has not submitted a valid  
5 Request for Exclusion.

6           22.    **Preliminary Approval.** The term “Preliminary Approval” shall refer to the order  
7 by the Court preliminarily approving of this Agreement.

8           23.    **Response Deadline.** The term “Response Deadline” shall refer to the date sixty  
9 (60) days after the Settlement Administrator mails the Class Notice to the Members of the  
10 Settlement Class and the last date on which Settlement Class Members may submit a Notice of  
11 Objection or Request for Exclusion.

12           24.    **Request for Exclusion.** The term “Request for Exclusion” shall refer to a written  
13 request, signed by a Settlement Class Member or their authorized representative, and timely sent  
14 to the Settlement Administrator as evidence of their intent to be excluded from, and not  
15 participate in, the Settlement Class. To be valid, the Request for Exclusion must: (1) contain the  
16 name, address, telephone number, and last four digits of the Social Security number of the person  
17 requesting exclusion; (2) be signed by the person; (3) unambiguously state that the person wishes  
18 to exclude themselves from the settlement; (4) be postmarked, faxed or emailed by the Response  
19 Deadline; and (5) be sent to the Settlement Administrator at the specified address, fax number or  
20 email address.

21           25.    **Settlement Administrator.** The term “Settlement Administrator” as used herein  
22 means CPT Group, Inc. who will be responsible for the administration of the Settlement Payment,  
23 as defined below, and all related matters.

24           26.    **Settlement Amount.** The term “Gross Fund Value” as used herein means the  
25 maximum sum of Four Hundred Thousand Dollars (\$400,000.00), which shall be paid by  
26 Defendant, and from which all Individual Settlement Payments, Court approved attorneys’ fees  
27 and litigation costs pursuant to Section XII, Administrative Costs pursuant to Section VIII,  
28 service award to Plaintiff pursuant to Section XIII, statutory penalties, interest and taxes pursuant

1 to Section XIV, and the PAGA Allocation pursuant to Section XV shall be paid, except as  
2 provided herein. Under no circumstances shall Defendant be required to pay more than the Gross  
3 Fund Value, inclusive of all amounts set forth in this Agreement or that may otherwise be  
4 required to consummate the Agreement and effectuate the Settlement. The Gross Fund Value has  
5 been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement  
6 value of individual claims of the Settlement Class Members.

7 27. **Settlement Class.** For settlement purposes only, the Parties agree to the  
8 certification of the following class pursuant to Code of Civil Procedure section 382 defined as:  
9 All persons who are or were employed by Defendant as non-exempt employees in the State of  
10 California at any time during the Class Period.

11 **II. BACKGROUND**

12 28. Initial Filing: On December 29, 2020, Plaintiff filed the Action asserting a wage  
13 and hour putative class and representative action. Defendant timely answered.

14 29. Investigation and Discovery. Class Counsel have conducted a substantial  
15 investigation of the facts in the Action, including an informal exchange of a large volume of  
16 information regarding the claims asserted in the Action, the defenses available to Defendant, and  
17 other relevant issues. By way of example, Defendant has produced, and Class Counsel has  
18 reviewed and analyzed, relevant wage and hour policies, relevant meal period and rest break  
19 policies, payroll information for the Settlement Class Members, wage statements for the  
20 Settlement Class Members, and other documents related to the Settlement Class Members'  
21 employment with Defendant.

22 30. Mediation. On or about October 21, 2021, the Parties held an all-day mediation  
23 with mediator Mark Rudy at the conclusion of which the Parties agreed to resolve the matter as  
24 stated herein. The terms of the Parties' agreement were outlined in a "Memorandum of  
25 Understanding." The Memorandum of Understanding was fully executed as of October 21, 2021.

26 31. No Admission of Liability. The Parties have entered into this Agreement in order  
27 to reduce the risks and costs of further Action, and to avoid further business distractions.  
28 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in

1 the Action. Among other things, Defendant contends that it complied in good faith with  
2 California wage and hour laws and the California Business and Professions Code, including, but  
3 not limited to: (a) paying the Settlement Class all minimum wages owed at the appropriate rate;  
4 (b) paying the Settlement Class all overtime wages owed at the appropriate rate; (c) providing the  
5 Settlement Class with all legally entitled meal periods; (d) providing Settlement Class Members  
6 with all legally entitled rest periods; (e) reimbursing the Settlement Class for all necessary  
7 business expenses incurred in the discharge of their duties; (f) paying the Settlement Class all  
8 wages owed at the time of separation; (g) providing the Settlement Class with all legally entitled,  
9 accurate, itemized wage statements; and (h) accurately maintaining all legally required  
10 employment records for the Settlement Class. Defendant further contends that, for any purpose  
11 other than settlement, this action is not appropriate for class treatment.

12 32. Fair, Reasonable, and Adequate Settlement. Based on the investigation  
13 summarized above, Class Counsel is of the opinion that the settlement on the terms set forth in  
14 this Agreement are fair, reasonable, and adequate and in the best interests of the Settlement Class  
15 in light of all known facts and circumstances, the risk of significant delay, defenses asserted by  
16 Defendant, unresolved legal issues that could have a material impact on the outcome of the  
17 Action, and numerous potential appellate issues. The Parties recognize that the issues presented in  
18 the Action are likely only to be resolved after extensive and costly pretrial proceedings, including,  
19 but not limited to, a dispute as to whether any of the claims asserted can be certified as a class  
20 action, and that further litigation will cause inconvenience, distraction, disruption, delay and  
21 expense disproportionate to the potential benefits of continued litigation. The Parties agree that  
22 they have taken into account the risk and uncertainty of the outcome inherent in any complex  
23 litigation of this nature.

24 33. This Agreement is intended to and does effectuate the full, final and complete  
25 resolution of all allegations and claims that were asserted, or could have been asserted, in the  
26 Action by Plaintiff and the Settlement Class Members as set forth in Section VII.

27 **III. JURISDICTION**

28 34. The Court has jurisdiction over the Parties and the subject matter of this Action.

1 The Action includes claims that, while Defendant deny them in their entirety, would, if proven,  
2 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted  
3 Final Approval of the Agreement and after the Court has ordered the entry of Judgment, the Court  
4 shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and  
5 enforcing this Agreement consistent with the terms set forth herein. The Agreement may be  
6 enforced pursuant to Code of Civil Procedure section 664.6.

7 **IV. STIPULATION OF CLASS CERTIFICATION**

8 35. The Parties stipulate to the certification of the Settlement Class under Code of  
9 Civil Procedure section 382 for purposes of the Agreement only. The Agreement is contingent  
10 upon the Preliminary Approval, Final Approval, and provisional certification of the Settlement  
11 Class only for purposes of the Agreement. Should the Agreement not become final, for whatever  
12 reason, the fact that the Parties were willing to stipulate provisionally to class certification as part  
13 of the Agreement shall have no bearing on, and shall not be admissible in connection with, the  
14 issue of whether a class should be certified in a non-settlement context in the Action. Defendant  
15 expressly reserves the right to oppose class certification should this Agreement be modified or  
16 reversed on appeal or otherwise not become final.

17 **V. MOTION FOR PRELIMINARY APPROVAL**

18 36. For purposes of implementing this Agreement, the Parties shall request that the  
19 Court enter Preliminary Approval, preliminarily approving the Agreement, certifying the  
20 Settlement Class for settlement purposes only, approving the Class Notice, and setting a date for  
21 the Final Approval hearing. The requested Preliminary Approval shall provide for the Class  
22 Notice to be sent to the Settlement Class and PAGA Group as specified herein.

23 37. Class Counsel will prepare the Motion for Preliminary Approval. On the same date  
24 on which it is filed with the Court, Class Counsel shall concurrently submit this Agreement to the  
25 LWDA in compliance with Labor Code § 2698 *et seq.*, PAGA. Defendant shall not oppose  
26 Plaintiff's Motion for Preliminary Approval, provided such motion and supporting papers are  
27 consistent with the terms of this Agreement.  
28



1 **VI. STATEMENT OF NO ADMISSION**

2 38. Defendant denies liability to Plaintiff and the Settlement Class, upon any claim or  
3 cause of action. This Agreement does not constitute, and is not intended to constitute, an  
4 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims  
5 made against them in the Action.

6 39. Nothing in this Agreement, nor any action taken in implementation thereof, nor  
7 any statements, discussions or communications, nor any materials prepared, exchanged, issued or  
8 used during the course of the negotiations leading to this Agreement, is intended by the Parties to  
9 constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any  
10 way in the Action or any other judicial, arbitral, administrative, investigative or other forum or  
11 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,  
12 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties  
13 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in the  
14 Action or any other judicial, arbitral, administrative, investigative or other forum or proceeding,  
15 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,  
16 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other  
17 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before  
18 the Court that has as its purpose the interpretation, implementation, or enforcement of this  
19 Agreement or any orders or judgments of the Court entered in connection with the Agreement.

20 40. None of the documents produced or created by Plaintiff or the Settlement Class in  
21 connection with the settlement administration procedures constitutes, or is intended to constitute,  
22 an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance,  
23 regulation, rule or executive order, wage order, or any obligation or duty at law or in equity.

24 41. The Parties agree that this Agreement's stipulation to class certification pursuant to  
25 Code of Civil Procedure section 382 is for settlement purposes only. Nothing in this Agreement  
26 will be construed as an admission or acknowledgement of any kind that any class should be  
27 certified or given collective treatment in the Action or in any other action or proceeding. Further,  
28 neither this Agreement nor the Court's actions with regard to this Agreement will be admissible

1 in any court or other tribunal regarding the propriety of class certification or collective treatment.  
2 In the event that this Agreement is not approved by the Court or any appellate court, is  
3 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,  
4 limited or affected in any way any claims, rights or remedies in the Action, and Defendant will  
5 not be deemed to have waived, limited, or affected in any way any of its objections or defenses in  
6 the Action.

7 **VII. WAIVER, RELEASE AND DISMISSAL**

8 42. **Release as to All Settlement Class Members.** Upon the Effective Date, Plaintiff  
9 and all Participating Settlement Class Members, will waive and release all claims, rights,  
10 demands, damages, liabilities and causes of action, whether known or unknown, contingent or  
11 vested, in law or in equity, arising at any time during the Class Period for unpaid wages or other  
12 compensation, and/or related penalties, interest, costs, attorneys' fees, punitive damages, and/or  
13 injunctive or other equitable remedies, allegedly owed or available, against Defendant and their  
14 respective former, current and future parent companies, subsidiaries, affiliates, shareholders,  
15 Members, agents (including, without limitation, any investment bankers, accountants, insurers,  
16 reinsurers, attorneys and any past, present or future officers, directors and employees)  
17 predecessors, successors, and assigns, allegedly owed or available, arising out of, or related to the  
18 claims, allegations and operative facts asserted in the operative complaint, including that  
19 Defendant: (1) failed to provide a required full, timely and uninterrupted meal periods; (2) failed  
20 to provide a required full, timely and uninterrupted rest periods; (3) failed to pay all earned wages  
21 and/or overtime payments (4) failed to keep accurate payroll records and/or failed to provide  
22 accurate wage statements; (5) failed to pay earned an unpaid wages upon ending of employment;  
23 and/or (6) in engaging in any or all of the aforementioned conduct, violated, or is liable under the  
24 California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 218.5, 218.6,  
25 221, 226, 226.3, 226.6, 226.7, 450, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1198,  
26 2802, 2698 et seq., Cal. Code tit. 5 section 11050 (California Wage Order 5-2001), California  
27 Business & Professions Code section 17200 et seq., and/or California Code of Civil Procedure  
28 section 1021. The incentive payment to Plaintiff and any other payments herein are expressly

1 contingent upon her execution of a release of all claims under California Civil Code § 1542 and  
2 any and all wage related claims, known or unknown, contingent or accrued.

3 43. Additionally, all PAGA Group Members who worked during the PAGA Period  
4 shall release all PAGA claims during the PAGA Period.

5 44. **General Release by Plaintiff Only.** Upon the Effective Date, Plaintiff also  
6 releases Defendant, and each of its respective past, present, and future parents, subsidiaries,  
7 affiliates, predecessors or successors in interest, officers, directors, shareholders, owners, current  
8 and former employees, attorneys, agents, assigns, insurers, and re-insurers of any of them, from  
9 all claims, demands, rights, liabilities and causes of action of every nature and description  
10 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,  
11 contract, or for violation of any state or federal statute, rule or regulation arising out of, relating  
12 to, or in connection with any act or omission by or on the part of Defendant (“General Release”).

13 45. With respect to the General Release, Plaintiff stipulates and agrees that, upon the  
14 Effective Date, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest  
15 extent permitted by law, the provisions, rights and benefits of Civil Code § 1542, or any other  
16 similar provision under federal or state law, which provides:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
18 **THAT THE CREDITOR OR RELEASING PARTY DOES**  
19 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
20 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**  
21 **AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**  
22 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
23 **WITH THE DEBTOR OR RELEASED PARTY.**

24 Accordingly, if the facts relating in any manner to this Agreement are found hereafter to be other  
25 than or different from the facts now believed to be true, the release of claims contained herein  
26 shall be effective as to all unknown claims.

27 46. The parties stipulate that Plaintiff will file an amended Complaint to add all  
28 necessary class claims to cover those wage and hour theories included in the PAGA notice,  
including: (1) Failure to Provide Meal Periods, (2) Failure to Authorize and Permit Rest Periods,  
(3) Failure to Pay Overtime Wages, (4) Failure to Pay Minimum Wages, (5) 4886-2570-1632.1  
Page 2 Failure to Pay All Wages Due to Discharged and Quitting Employees, (6) Failure to

1 Maintain Required Records, (7) Failure to Furnish Accurate Itemized Wage Statements, (8)  
2 Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties, (9)  
3 Unfair and Unlawful Business Practices, and (10) any other theories required to cover all claims  
4 advanced in the PAGA claim.

5 **VIII. SETTLEMENT ADMINISTRATOR**

6 47. Plaintiff and Defendant, through their respective counsel, have selected CPT  
7 Group, Inc. as the Settlement Administrator to administer the Agreement. This includes but is not  
8 limited to distributing and responding to inquiries about the Class Notice, maintaining a website  
9 for providing information about the Agreement to the Settlement Class and PAGA Group,  
10 determining the validity of any opt-outs, calculating all amounts to be paid from the Gross Fund  
11 Value, and establishing and administering a qualified settlement fund. The website maintained by  
12 CPT Group, Inc. shall allow Settlement Class Members to access the pleadings, the Agreement,  
13 the class notice, and information regarding the Final Approval hearing. Charges and expenses of  
14 the Settlement Administrator, not to exceed \$8,500.00, will be paid from the Gross Fund Value.  
15 If the actual Settlement Administrator fees are less than the \$8,500.00 capped amount, the  
16 difference will revert to the Net Settlement Amount.

17 **IX. NOTICE, OBJECTIONS, AND EXCLUSION RIGHTS**

18 48. As soon as practicable following the Court's entry of Preliminary Approval, but no  
19 later than fourteen (14) calendar days after the Court's entry of Preliminary Approval, Defendant  
20 will provide to the Settlement Administrator an updated list of Settlement Class Members and  
21 PAGA Group ("Class List") containing names, social security numbers, dates of employment,  
22 number of Compensable Workweeks during the Class Period and PAGA Period, last known  
23 addresses and phone numbers ("the Database"). The information within the Database shall also  
24 be provided to Class Counsel upon request exclusively for use in furtherance of the Settlement  
25 and not for any other purpose. Defendant further agrees to consult with the Settlement  
26 Administrator prior to the production date to ensure that the format will be acceptable to the  
27 Settlement Administrator.

28 ///

1           49.     **Class Notices.** Within fourteen (14) calendar days following receipt of the  
2 Database, the Settlement Administrator shall determine the gross wages for each Class Member,  
3 populate the Class Notices for each Class Member accordingly and mail the Class Notices. Each  
4 notice will provide: (1) information regarding the nature of the Action; (2) a summary of the  
5 Agreement's principal terms; (3) the Settlement Class and PAGA Group definitions; (4) the total  
6 number of Compensable Workweeks that each Member of the Settlement Class and PAGA Group  
7 worked during the Class Period and PAGA Period; (5) the formula for calculating Individual  
8 Settlement Payments and PAGA Distributions for each Member of the Settlement Class and  
9 PAGA Group; (6) the estimated Individual Settlement Payment and PAGA Distribution for each  
10 Member of the Settlement Class and PAGA Group; (7) the dates comprising the Class Period and  
11 PAGA Period; (8) instructions on how to submit a Request for Exclusion or Notice of Objection;  
12 and (9) and the Response Deadline by which the Members of the Settlement Class must postmark  
13 a Request for Exclusion or a Notice of Objection. The Notice shall also explain that Settlement  
14 Class Members will not be required to submit a claim form in order to receive their individual  
15 share of the Settlement.

16           50.     **Confirmation of Contact Information in the Class List.** Prior to mailing the  
17 Class Notice, the Settlement Administrator shall run all the addresses provided through the  
18 United States Postal Service NCOA database (which provides updated addresses for any  
19 individual who has moved in the previous four years who has notified the U.S. Postal Service of a  
20 forwarding address) to obtain current address information, and shall then mail the Class Notice to  
21 the Settlement Class and PAGA Group within fourteen (14) calendar days following receipt of  
22 the Database from Defendant via first-class U.S. mail using the most current mailing address  
23 information available. The Class Notice shall provide the Settlement Class and PAGA Group  
24 notice of all applicable dates and deadlines.

25           51.     **Returned Notices.** Any Class Notices returned to the Settlement Administrator as  
26 non-deliverable on or before the Response Deadline will be sent promptly via regular first-class  
27 U.S. mail to the forwarding address affixed thereto and the Settlement Administrator will indicate  
28 the date of such re-mailing on the Class Notice. If no forwarding address is provided, the

1 Settlement Administrator will promptly attempt to determine the correct address using a skip-  
2 trace, or other search using the name, address and/or social security number of the Settlement  
3 Class or PAGA Group Member involved, and will then perform a single re-mailing.

4       **52. Objections.** In order for any Member of the Settlement Class to object to this  
5 Agreement, or any term of it, the Settlement Class Member making the objection must not submit  
6 a Request for Exclusion (i.e., must not opt out). Rather, a written objection (“Notice of  
7 Objection”) must be signed by the Settlement Class Member or his or her authorized  
8 representative and sent to the Settlement Administrator by mail or facsimile by no later than the  
9 Response Deadline. The Class Notice shall contain instructions on how to submit an objection. If  
10 the Settlement Class Member timely submits a Notice of Objection by the Response Deadline, he  
11 or she may appear, personally or through an attorney, at his or her own expense, at the Final  
12 Approval hearing to present his or her objection directly to the Court. If a Settlement Class  
13 Member objects to the Agreement, the Settlement Class Member will be considered a  
14 Participating Settlement Class Member and if the Court approves this Agreement, the  
15 Participating Settlement Class Member will be bound by the terms of the Agreement and Final  
16 Approval in the same way and to the same extent as a Participating Settlement Class Member  
17 who does not object. The date of mailing of the Class Notice to the objecting Settlement Class  
18 Member shall be conclusively determined according to the records of the Settlement  
19 Administrator. The Court retains final authority with respect to the consideration and  
20 admissibility of any Settlement Class Member objections. The Parties shall not be responsible for  
21 any fees, costs, or expenses incurred by any Settlement Class Member and/or his or her counsel  
22 related to any objections and/or appeals arising therefrom. Furthermore, Plaintiff waives any right  
23 to object to the Agreement, and hereby endorses the Agreement as fair, reasonable and adequate  
24 and in the best interests of the Settlement Class Members.

25       **53. Opportunity to be Excluded.** In order for any Settlement Class Member to  
26 validly exclude him or herself from the Agreement (i.e., to validly opt out), a written Request for  
27 Exclusion must be signed by the Settlement Class Member or his or her authorized representative  
28 and sent to the Settlement Administrator, postmarked no later than the Response Deadline. The

1 Class Notice shall contain instructions on how to opt out. The date of the initial mailing of the  
2 Class Notice and the date the signed Request for Exclusion was postmarked shall be conclusively  
3 determined according to the records of the Settlement Administrator. Any Settlement Class  
4 Member who submits a valid Request for Exclusion will not be entitled to a Individual Settlement  
5 Payment, will not be bound by the terms and conditions of the Agreement, and will not have any  
6 right to object, appeal, or comment thereon; provided, however, that a Settlement Class Member's  
7 submission of a valid Request for Exclusion shall not affect his or her right, if any, to receive a  
8 proportionate share of the PAGA Distribution in accordance with Paragraph 54, below. In turn,  
9 any Settlement Class Member who does not timely submit a Request for Exclusion will be  
10 deemed a Participating Settlement Class Member in accordance with this Agreement. Plaintiff  
11 waives any right to be excluded from the Agreement.

12 **X. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

13 54. **Distribution of the Net Settlement Amount and PAGA Distribution.** The  
14 Participating Settlement Class Members and PAGA Group Members will receive a lump-sum  
15 payment as good and valuable consideration for the waiver and release of claims set forth in  
16 Paragraph 42, above, in an amount determined by the Settlement Administrator in accordance  
17 with the provisions of this Agreement. The Settlement Administrator will determine the  
18 Individual Settlement Payment for each Participating Settlement Class Member and the PAGA  
19 Distribution for each Member of the PAGA Group according to the formula described in this  
20 paragraph:

- 21 a. **The Settlement Class.** The Net Settlement Amount shall be divided among all  
22 Participating Settlement Class Members. Each Participating Settlement Class  
23 Member shall receive a proportionate share that is equal to (a) the number of  
24 Compensable Workweeks he or she worked during Class Period, divided by  
25 (b) the total number of Compensable Workweeks worked by all Participating  
26 Settlement Class Members during the Class Period;
- 27 b. **The PAGA Group.** The PAGA Distribution shall be divided among all  
28 Members of the PAGA Group. Each PAGA Group Member shall receive a

1 proportionate share that is equal to (a) the number of Compensable Workweeks  
2 he or she worked during the PAGA Period, divided by (b) the total number of  
3 Compensable Workweeks worked by all PAGA Group Members during the  
4 PAGA Period.

5 **55. Resolution of Disputes.** Any Members of the Settlement Class or PAGA Group  
6 may challenge the computation of his or her Compensable Workweeks by submitting a written  
7 dispute in conformity with the instructions contained in the Class Notice. Any such dispute must  
8 contain the amount of Compensable Workweeks that the Settlement Class or PAGA Group  
9 Member contends to have worked, along with supporting documentation. Disputes must be  
10 mailed or faxed to the Settlement Administrator, postmarked or fax-stamped no later than the  
11 Response Deadline to be considered. The dispute shall be determined by the Settlement  
12 Administrator, who shall examine all available written records in an attempt to resolve the  
13 dispute. Defendant's records shall be presumed accurate and control unless the Settlement Class  
14 or PAGA Group Member provides satisfactory proof that Defendant's records are incorrect. In  
15 any event, the Settlement Administrator will make every reasonable effort to resolve any such  
16 disputes before Final Approval of this Agreement, and if any disputes cannot be resolved by that  
17 time, they will be resolved by the Court at the Final Approval hearing.

18 **56. Funding of Agreement.** Within fourteen (14) calendar days of the Date of Final  
19 Approval, Defendant will deposit the Gross Fund Value into an interest-bearing trust account for  
20 the benefit of the participating Settlement Class Members and Class Counsel, through the  
21 Settlement Administrator. At no time prior to the Date of Final Approval shall Defendant be  
22 required to escrow any portion of the Gross Fund Value.

23 **57. Time for Distribution.** The Settlement Administrator shall cause the Individual  
24 Settlement Payments, Court approved enhancements to the Plaintiff, Court approved attorney's  
25 fees and litigation costs, Administrative Costs, PAGA Distribution, and PAGA Payment to be  
26 mailed within ten (10) business days after the Effective Date. If a check is returned to the  
27 Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt  
28 to obtain a valid mailing address by performing a skip trace search and, if another address is



1 identified, shall mail the check to the newly identified address.

2 58. **Unclaimed Funds.** If any Individual Settlement Payments remain uncashed after  
3 one hundred and eighty (180) calendar days from the date the check is issued, such check(s) will  
4 be voided by the Settlement Administrator. Thereafter, the funds represented by any uncashed or  
5 undeliverable checks shall be distributed in accordance with Code of Civil Procedure section 384,  
6 subject to approval by the Court, plus any accrued interest thereon, to the State of California  
7 Controller's Office Unclaimed Property Fund.

8 **XI. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

9 59. The amounts paid under this Agreement do not represent a modification of any  
10 previously credited hours of service under any employee benefit plan, policy or bonus program  
11 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,  
12 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)  
13 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this  
14 Agreement shall not be applied retroactively, currently or on a going forward basis as salary,  
15 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan,  
16 policy or bonus program. Defendant retains the right to modify the language of their benefit  
17 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid  
18 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any  
19 similar measuring term as defined by applicable plans, policies and bonus programs for purpose  
20 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or  
21 benefits are not required by this Agreement.

22 **XII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

23 60. As part of the Agreement, Defendant agrees not to oppose an application by Class  
24 Counsel for reasonable attorneys' fees up to one-third (33.33%) of the Gross Fund Value, which  
25 is One Hundred Thirty-Three Thousand Three Hundred Twenty Dollars and Zero Cents  
26 (\$133,320.00). This amount shall include all past and future attorneys' fees for which Plaintiff  
27 and Class Counsel could claim under any legal theory whatsoever in connection with this action.  
28 The "future" aspect of these amounts includes, without limitation, all time expended by Class

1 Counsel in defending the Agreement and securing Final Approval (including any appeals therein).  
2 There will be no additional charge of any kind to either the Settlement Class or PAGA Group  
3 Members or request for additional consideration from Defendant for such work.

4 61. As part of the Agreement, Defendant agrees not to oppose an application by Class  
5 Counsel for actual litigation costs which shall include all past and future litigation costs for which  
6 Class Counsel could claim under any legal theory whatsoever in connection with this action. The  
7 “future” aspect of this amount includes, without limitation, all amounts expended by Class  
8 Counsel in defending the Agreement and securing Final Approval (including any appeals therein).  
9 There will be no additional charge of any kind to either the Settlement Class or PAGA Group  
10 Members or request for additional consideration from Defendant for such work.

11 62. Should the Court approve a lesser amount of reasonable attorneys’ fees or  
12 litigation costs than what is sought by Class Counsel, the unapproved portion shall revert to the  
13 Net Settlement Amount. Any Court order awarding less than the amount of attorneys’ fees or  
14 litigation costs sought by Class Counsel shall not be grounds to rescind the Agreement or  
15 otherwise void the settlement.

16 63. Any award of reasonable attorneys’ fees and litigation costs awarded to Class  
17 Counsel by the Court shall be deducted from the Gross Fund Value for the purpose of  
18 determining the Net Settlement Amount, and shall be reported on IRS Form 1099. The Settlement  
19 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of reasonable  
20 attorneys’ fees and litigation costs awarded by the Court.

21 **XIII. INCENTIVE AWARD TO PLAINTIFF**

22 64. As part of the Agreement, Defendant agrees not to oppose an application by  
23 Plaintiff for a reasonable incentive award of up to Seven Thousand Five Hundred Dollars and  
24 Zero Cents (\$7,500.00) for her participation in and assistance with the Action, and in exchange  
25 for her General Release.

26 65. Should the Court approve an enhancement amount less than Seven Thousand Five  
27 Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff, the unapproved portion shall revert to  
28 the Net Settlement Amount. Any Court order awarding less than the amount sought by Plaintiff

1 shall not be grounds to rescind the Agreement or otherwise void the settlement.

2 66. Any incentive award paid to Plaintiff shall be deducted from the Gross Fund Value  
3 for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form  
4 1099. The Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting the  
5 amount of any enhancement awarded by the Court.

6 **XIV. TAXATION AND ALLOCATION**

7 67. The Parties agree that all legally required payroll withholdings will be withheld  
8 from the Individual Settlement Payments based on the Parties' stipulated allocation provided for  
9 in this Section. All amounts constituting the employer's share of payroll taxes shall be paid by  
10 Defendant separate and apart from the Gross Fund Value.

11 68. The amount of federal income tax withholding will be based upon a flat  
12 withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-  
13 1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to  
14 applicable state and/or local withholding codes or regulations.

15 69. For withholding tax characterization purposes and payment of taxes, the Individual  
16 Settlement Payments shall be deemed and are allocated by the Parties as follows: (i) 75% as  
17 penalties and interest; and (ii) 25% as wages.

18 70. W-2 Forms and/or 1099 Forms will be distributed at times and in the manner  
19 required by the Internal Revenue Code of 1986 and consistent with this Agreement. If the  
20 Internal Revenue Code of 1986, the regulations promulgated thereunder, or other applicable tax  
21 law, is changed after the date of this Agreement, the processes set forth in this section may be  
22 modified in a manner to bring Defendant into compliance with any such changes.

23 **XV. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

24 71. Seventy-five percent (75%) of the PAGA Allocation (i.e. \$30,000.00) shall be paid  
25 by the Settlement Administrator directly to the LWDA (the PAGA Payment). The remaining  
26 twenty-five percent (25%) of the PAGA Allocation (\$10,000.00) shall be paid by the Settlement  
27 Administrator to the PAGA Group (the PAGA Distribution) in accordance with Paragraph 55. A  
28 PAGA Group Member who is also a Participating Settlement Class Member is eligible to receive

1 his or her proportionate share of the PAGA Distribution, in addition to any Individual Settlement  
2 Payment allocated to him or her under Paragraph 55.

3 **XVI. COURT APPROVAL**

4 72. This Agreement is contingent upon Final Approval by the Court and the entry of  
5 judgment. Plaintiff and Defendant agrees to take all steps as may be reasonably necessary to  
6 secure both Preliminary Approval and Final Approval of the Agreement, to the extent not  
7 inconsistent with the terms of this Agreement, and will not take any action adverse to each other  
8 in obtaining Court approval, and, if necessary, appellate approval, of the Agreement in all  
9 respects. Plaintiff and Defendant expressly agree that they will not file any Notice of Objection  
10 to the terms of this Agreement or assist or encourage any person or entity to file any such Notices  
11 of Objection.

12 **XVII. MISCELLANEOUS PROVISIONS**

13 73. **Stay of Action.** Plaintiff and Defendant agree to stay all discovery in the Action,  
14 pending Final Approval of the Agreement by the Court. The Parties further stipulate and agree,  
15 pursuant to Code of Civil Procedure section 583.330(a), that the time period from the date of the  
16 execution of this Agreement to the Date of Final Approval shall not be included in the  
17 computation of the five-year period specified in Code of Civil Procedure section 583.310..

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

1 Plaintiff, on her own behalf and on behalf of the Settlement Class, and Defendant participated in  
2 the negotiation and drafting of this Agreement and had available to them the advice and  
3 assistance of independent counsel. As such, neither Plaintiff nor Defendant may claim that any  
4 ambiguity in this Agreement or that this Agreement should be construed against the other.

5 75. **Modification.** The terms and conditions of this Agreement constitute the exclusive  
6 and final understanding and expression of all agreements between Plaintiff and Defendant with  
7 respect to the Agreement. The Agreement may be modified only by a writing signed by the  
8 original signatories and approved by the Court.

9 76. **Further Cooperation.** Plaintiff and Defendant and their respective attorneys shall  
10 proceed diligently to prepare and execute all documents, to seek the necessary approvals from the  
11 Court, and to do all things reasonably necessary or convenient to consummate the Agreement as  
12 expeditiously as possible.

13 77. **Counterparts.** The Agreement may be executed in one or more actual or non-  
14 original counterparts, all of which will be considered one and the same instrument and all of  
15 which will be considered duplicate originals.

16 78. **Authority.** Each individual signing below warrants that he or she has the authority  
17 to execute this Agreement on behalf of the party for whom or which that individual signs.

18 79. **Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set  
19 forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be  
20 continued until the following business day.

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

27 81. **Opt-Out Threshold.** If six percent (6%) or more of the Settlement Class  
28 Members exercise their rights to exclude themselves and opt out of the Agreement, Defendant

1 may, in its sole discretion, unilaterally withdraw from and terminate the Agreement no later than  
2 five (5) days prior to the date of the Final Approval hearing. In the event of Defendant's  
3 withdrawal, no Party may use the fact that the Parties agreed to the Agreement for any reason.

4 Date: March 8, 2022

LAURA DELGADO, on behalf of herself  
and all others similarly situated

6 By:   
7

Laura delgado (Mar 8, 2022 18:04 PST)

LAURA DELGADO

8 Date: April 19, 2022

9 By: 

10 For: ORINDA CARE CENTER, LLC

11 **APPROVED AS TO FORM**

12 Date: April 19, 2022

LEWIS BRIDBOIS BISGAARD & SMITH LLP

14 By: 

JEFFREY S. RANSEN

SUMY KIM

Attorneys for Defendant

ORINDA CARE CENTER, LLC

18 Date: April 26, 2022

MATERN LAW GROUP, PC

19 By: 

MATTHEW J. MATERN

MIKAEL H. STAHL

Attorneys for Plaintiff

LAURA DELGADO, individually, and on  
behalf of others similarly situated