

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Settlement Agreement”) is entered into by and between Defendants RSCR California, Inc. (a Delaware Corporation) and Res-Care, Inc., (a Kentucky corporation) (“Defendants” or “ResCare”), on one hand, and Plaintiffs Gloria Nelson and Julia Tellez (the “Named Plaintiffs” or, individually, “Tellez” or “Nelson”), on behalf of themselves and on behalf of the subclasses of ResCare employees described below, on the other. This Settlement Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims, as defined below, upon and subject to the terms and conditions of this Settlement Agreement.

### I. RECITALS

A. WHEREAS, on November 19, 2009, counsel for Plaintiffs sent notice to the Labor Workforce Development Agency (“LWDA”) of alleged violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1182.12, 1194, 1197, and 1198 (including subparts).

B. WHEREAS, on November 4, 2009, a class action lawsuit now entitled *Gloria Nelson, and Julia Tellez individually, and on behalf of all others similarly situated v. Res-Care, Inc., RSCR California, Inc., Companion Care, Inc., et al.* Case No. MSC09-03073, was filed in the Superior Court of Contra Costa County, California (“the Action”).

C. WHEREAS, the Named Plaintiffs on behalf of class members in the Action have asserted claims for, among other things, unpaid wages, minimum wages, overtime wages, unfair competition, failure to pay wages twice per month, waiting time penalties, wage statement penalties, and other civil penalties (including penalties pursuant to Labor Code sections 2698 *et seq.* (“PAGA”)).

D. WHEREAS, on December 15, 2012, the Court in the Action certified the case as a class action, identifying three (3) separate subclasses: the “sleep time class”, the “meals and lodging class” and the “overtime class”.

E. WHEREAS, the Parties engaged in extensive formal and informal discovery before they reached this Settlement Agreement which included, but was not limited to, more than four years of active litigation, more than 45 depositions, the propounding of multiple sets of written discovery to which Defendants responded and produced hundreds of thousands of pages of documents, dispositive motion hearings, Defendants’ production of numerous written policy documents, payroll records, personnel records, employee census data, wage data, and additional sampling of personnel and payroll records of several class members randomly selected.

F. WHEREAS, on beginning on April 16, 2012, continuing thereafter and then formally recommencing on January 6, 2014, the Parties engaged in multiple mediations before Michael J. Loeb, an experienced wage and hour class-action mediator with JAMS, and continuously negotiated over a potential settlement of this case with Mr. Loeb’s assistance.

G. WHEREAS, the Parties have reached an agreement to settle, which is intended to fully and finally resolve all claims as to the Named Plaintiffs and the class members in the Action.

NOW, THEREFORE, the Parties agree as follows:

## II. DEFINITIONS

A. “Action” refers to the class action lawsuit identified in Section I.B, above, pending in the Superior Court for Contra Costa County, California.

B. “Claim and Exclusion Form” refers to a document substantially in the form of Exhibit A hereto, or as it may hereafter be modified by subsequent agreement of the Parties or order of the Court. Eligible individuals who submit valid and timely claims in accordance with this Settlement Agreement are referred to herein as “Claimants.”

C. “Claims Administrator” refers to Simpluris, Inc. or such other entity upon whom the Parties mutually agree.

D. “Class Certification Order” means the December 15, 2012 Class Certification Order entered by the Court in the Action.

E. “Class Counsel” refers to Stephen A. Sommers and Samantha R. Pungprakearti of The Sommers Employment Law Group and Miles Locker and Rachel Folberg of Locker Folberg, LLP.

F. “Class Notice” refers to the Notice of Class Action Settlement and Final Approval Hearing substantially in the form of Exhibit B hereto, as it may hereafter be modified by agreement of the Parties or order of the Court.

G. “Class Period” refers to the period from November 4, 2005 through the date of the Court’s preliminary approval of this class action settlement.

H. “Court” refers to the court having jurisdiction over the Action, at any stage of the Action, presently the Superior Court for Contra Costa County, California.

I. “Defendants’ Counsel” refers to Ronald G. Polly, Jr., Matthew A. Boyd, Brenton S. Bean, and Jacob N. Zuniga of Hawkins Parnell Thackston & Young LLP.

J. “Exclusion Period” refers to the interval beginning with the date Class Notice is first mailed to Settlement Class members and ending sixty (60) days after the date of first mailing. If a second mailing to any Settlement Class Member is required as a result of the initial mailing being returned as undeliverable, the Exclusion Period for those Settlement Class Members only, who shall be sent a second mailing, will be extended for 20 days (80 days from first mailing) irrespective of when the first mailing was returned as undeliverable.

K. “Final Approval Order” refers to the order of the Court granting final approval of this settlement as to the Final Settlement Class (defined below) and entering a judgment approving this settlement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties (substantially in the same form as the document attached hereto as Exhibit C).

L. “Final Settlement Class Members” refers to all Settlement Class Members who do not timely and validly exclude themselves from the class in compliance with the exclusion procedures set forth in this Settlement Agreement.

M. “Final Effective Date” means:

1. If there is an appeal of the trial court’s Final Approval Order and Judgment in the Action, including, but not limited to, any appeal of an award of attorneys’ fees and costs or enhancement payment to the Named Plaintiffs, the date of final affirmance of the Judgment on an appeal, the date of dismissal of such appeal, the expiration of the time for a petition for review of such appeal by the California Supreme Court of the Judgment, and, if review is granted, the date of final affirmance of that Judgment following review pursuant to that grant; or

2. If there is no appeal, then 61 days after notice to Defendants of entry of trial court’s Final Approval Order and Judgment in the Action, or 121 days after entry of the Final Approval Order if no notice to Defendants is given.

N. “Estimated Live-In Shifts Worked” shall mean the estimated number of Live-In Shifts (defined below) worked by an individual Settlement Class member while employed by a Defendant in California during the Class Period. If an individual Settlement Class member worked for a Defendant during workweeks where his or her Live-In Shifts were not recorded in Defendants’ “Point of Care” timekeeping system (“Point of Care”), the Parties have agreed to allocate a specified number of Live-In Shifts for each week worked by such individual during the pre-Point of Care time periods of the Class Period. Such number was jointly derived and agreed to by the Parties by taking the average number of live-in shifts worked each week by the individual Settlement Class Members recorded in Point of Care, and applying that average to each workweek worked by a Settlement Class Member prior to the implementation of Point of Care.

O. “Facility” shall mean a facility, such as a hospital, nursing home, convalescent care facility, or similar facility (however designated), that provides care or maintenance for the injured, ill, elderly or disabled, that is licensed by the State of California.

P. “Live-In Shift” shall mean a shift worked by a class member where the shift was 24 hours or more, no other employees worked on the shift, and the class member was required to stay in close proximity to a client of a Defendant (whether at their place of residence or otherwise) for the entire shift.

Q. “Judgment” refers to the judgment entered by the Court in conjunction with the Final Approval Order (substantially in the same form as Exhibit D hereto).

R. “Maximum Distributable Amount” shall be the amount as determined under paragraph IX.A.5, below.

S. “Maximum Settlement Amount” shall be Eight Million, Five Hundred Thousand Dollars (8,500,000.00) Such amount shall be consideration for the settlement and release of all amounts sought by the Plaintiffs on behalf of themselves and/or the Settlement Class (or any other putative class articulated in the First Amended Complaint in the Action), and shall include, but not be limited to the following elements: attorney’s fees and costs of Class Counsel as provided in this Settlement Agreement and approved by the Court, payments to Settlement Class members as described in this Settlement Agreement, employee-paid withholding and payroll taxes (including, without limitation, state and federal income taxes, social security contributions, disability fund contributions, and unemployment taxes), civil penalties paid or payable to the LWDA as described in this Settlement Agreement, and all other settlement-related payments and costs. Defendants shall pay all administrative costs for notice of class settlement and opportunity to object or make a claim, discovery of class members’ current addresses if necessary, and payment to the Settlement Class. Payment of administrative costs will be above and beyond the Maximum Settlement Amount.

T. “Named Plaintiffs” refers to Gloria Nelson (or individually “Nelson”) and Julia Tellez (or individually “Tellez”).

U. “Overtime Allocation” shall mean the method the Parties have agreed upon to establish individual claim amounts for the Overtime Subclass. The Overtime Subclass has been allocated a certain amount of the Maximum Distributable Amount as set forth in this Agreement. Each individual eligible to participate in the Overtime Subclass shall be allocated a percentage of the amounts eligible for distribution to the Overtime Subclass based upon the number of weeks worked for a Defendant in the Class Period by such individual divided by the total number of weeks worked in the Class Period by individuals in the Overtime Subclass.

V. “Parties” refers to the Named Plaintiffs and Defendants, and, in the singular, to any of them.

W. “Preliminary Approval Order” refers to the order of the Court granting preliminary approval of the Settlement set forth herein (substantially in the same form as Exhibit E hereto).

X. “Settlement Class Member” refers to any person employed by RSCR California, Inc. or Res-Care, Inc. in California at any time during the Class Period who fall into one or both of the following two groups:

1. The “Live-In Subclass”, which includes any employee who worked for a Defendant in California as direct care staff during the Class Period in Defendants’ ResCare HomeCare division, and who worked at least one (1) Live-In Shift during the Class Period; and

2. The “Overtime Subclass”, which includes any employee who worked for a Defendant in California as direct care staff during the Class Period in Defendants’

ResCare HomeCare division, and who during the Class Period provided services to a client of Defendant(s) who resided in a Facility and who may have worked (i) more than 40 hours in a workweek and/or (ii) eight (8) hours in a work day, in a week where work was performed by such Settlement Class Member in a Facility.

3. Based upon the definitions above, the Parties estimate that the Settlement Class consists of approximately 1674 members of the Live-In Subclass and 137 members of the Overtime Subclass. The Parties acknowledge that there is overlap between the two Subclasses listed above, and that some class members may be members of both Subclasses.

4. The Parties acknowledge and agree that those individuals who are defined in this Agreement as being members of the Live-In Subclass include all of those individuals who are members of two (2) of the subclasses identified in the Class Certification Order: the “sleep time” and “meal and lodging credit” subclasses defined therein. The Parties acknowledge and agree that due to the substantial overlap between the members of the two above-referenced Class Certification Order subclasses, it is fair, reasonable, and appropriate to combine such subclasses into the single “Live-In Subclass” for purposes of this Settlement and settlement administration.

Y. “Settlement Share” refers to the payment to which a qualifying Final Settlement Class member is eligible to claim pursuant to this Settlement, as more fully set forth in Section IX.B.2 below.

Z. “Total Estimated Live-In Shifts Worked” shall mean the total Live-In Shifts allocated to all Live-In Subclass members during the Class Period, as provided herein.

### **III. APPLICATION FOR COURT APPROVAL OF SETTLEMENT, CLASS CERTIFICATION, CLASS NOTICE AND FINAL APPROVAL HEARING**

Promptly upon the full execution of this Settlement Agreement, Plaintiffs shall apply to the Court for approval of the Settlement, including a Preliminary Approval Order preliminarily approving the Settlement Agreement under the legal standards relating to the preliminary approval of class action settlements; approving the Class Notice and Claim and Exclusion Form, as attached hereto as Exhibits A and B, respectively; and setting a final approval hearing and briefing schedule. Solely for purposes of this Settlement, Defendants stipulate that the Settlement Class meets all of the class certification requirements of Code of Civil Procedure section 382. Should this Settlement not become effective for any reason, the fact that the Parties stipulated to certification of a Settlement Class in this Settlement Agreement shall have no bearing on and not be admissible on the question of whether a class should be certified or should continue to be maintained in a non-settlement context, in the Action or any other lawsuit or proceeding, and as to Defendants’ liability for the claims alleged by Plaintiffs, individually and on behalf of the Settlement Class, which liability Defendants expressly deny.

### **IV. CLAIMS ADMINISTRATION**

A. Engagement of Claims Administrator. Promptly upon entry of the Preliminary Approval Order (if not sooner), the Parties shall engage the Claims Administrator. As more

fully set forth in paragraph IX, Defendants shall pay the Claims Administrator's reasonable fees, estimated not to exceed \$25,000.00

B. Duties of Claims Administrator. The Claims Administrator shall be solely responsible for:

1. Preparing, printing and disseminating to Settlement Class members the Class Notice and Claim and Exclusion Form;

2. Promptly furnishing to counsel for the Parties copies of any requests for exclusion, objections or other written or electronic communications from Settlement Class members which the Claims Administrator receives;

3. Receiving and reviewing the Claims submitted by Final Settlement Class members to determine eligibility for payment;

4. Determining and distributing the Settlement Share of each qualifying Final Settlement Class member in accordance with this Settlement Agreement;

5. Keeping track of requests for exclusion including maintaining the original mailing envelope in which the request was mailed;

6. Preparing and mailing, in accordance with this Settlement Agreement and Order of the Court, Class Counsel's attorneys' fees and costs, the Named Plaintiffs' enhancement awards, the amount intended to satisfy claims for civil penalties payable to the LWDA under PAGA, and Settlement Shares to Final Settlement Class members;

7. Ascertaining current address and addressee information for each Class Notice and Claim and Exclusion Form returned as undeliverable and re-mailing the Class Notice and Claim and Exclusion Form where appropriate as set forth in section V.B.;

8. Performing all tax reporting duties required by federal, state or local law including the filing and distributing of all necessary tax returns and related forms (e.g., 1099s, W-2s, etc.);

9. Referring to Class Counsel all inquiries by Settlement Class members regarding matters not within the Claims Administrator's duties specified herein;

10. Apprising counsel for the Parties of the activities of the Claims Administrator;

11. Maintaining adequate records of its activities, including the dates of each mailing of Class Notices and mailing and receipt of Claim and Exclusion Forms, returned mail and other communications and attempted written or electronic communications with Settlement Class members;

12. Confirming in writing its completion of the administration of the settlement;

13. Preparing a final report summarizing the number of requests for exclusion and disputes filed;

14. Prepare a declaration attesting to compliance with the requirements set forth above. Such declaration shall be provided to Class Counsel and Defendant's Counsel and filed with the Court no later than five (5) days prior to the Final Approval Hearing;

15. Resolving disputes during the claims administration process in the manner provided under subparagraph C below; and

16. Such other tasks as the Parties mutually agree.

C. Dispute Resolution. The Claims Administrator will have the initial responsibility for resolving all disputes, including those where Defendants' records differ from the information submitted by Settlement Class members with their Claim and Exclusion Forms that arise during the claims process, including, without limitation, disputes regarding whether an employee is entitled to a Settlement Share and, if so, to what extent. In resolving such disputes, Defendants' employment records shall be presumed to be accurate and correct, and shall be final and binding, unless the information submitted by the Settlement Class member (e.g., time records, pay stubs, employment records, termination notice, final pay information, etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims Administrator will request a conference call between the Claims Administrator, Class Counsel, and Defendants' Counsel to discuss and resolve the dispute. After such call, the Claims Administrator will resolve the dispute and such resolution shall be final and binding on the Settlement Class member.

## **V. CLASS NOTICE AND CLAIM AND EXCLUSION FORM**

A. Initial Identification of Settlement Class Members. Within 45 days of the date of the Preliminary Approval Order, Defendants will provide the Claims Administrator and Class Counsel a confidential list containing, to the extent reasonably ascertainable by Defendants' records, the name, last known address, telephone number, encrypted social security number, Estimated Live-In Shifts worked and Estimated Overtime shifts worked for each Settlement Class member. Defendants shall provide this information to the Claims Administrator in a Microsoft Excel file or other electronic format that is acceptable to both Defendants and the Claims Administrator.

B. Mailing of Class Notice and Claim and Exclusion Form. Promptly upon receipt of the Settlement Class member information from Defendants, the Claims Administrator shall obtain updated forwarding addresses from the U.S. Postal Service. Within 10 business days after receipt of the Settlement Class member information identified in Paragraph V.A., the Claims Administrator shall mail the Class Notice and Claim and Exclusion Form to all Settlement Class members via first-class U.S. mail using the updated address information. With respect to each Class Notice that is returned as undeliverable before the end of the Exclusion Period, the Claims Administrator shall promptly attempt to determine a correct address using a skip trace and shall re-send the Class Notice and Claim and Exclusion Form via fist-class mail to any new address thereby determined.

C. Submission of Claim and Exclusion Forms. To qualify to receive a Settlement Share, a Settlement Class member must complete and sign the Claim and Exclusion Form included with his or her Class Notice and must return the completed form to the Class Administrator by first-class mail or the equivalent, postmarked no later than the last day of the Exclusion Period.

## **VI. BINDING EFFECT; EXCLUSION AND OBJECTION RIGHTS**

A. Right of Settlement Class Members to Be Excluded. Any Settlement Class member, other than a Named Plaintiff, may elect to be excluded from the Settlement Class at any time during the Exclusion Period. To be effective, any such election must be made in writing; must contain the name, address, telephone number, and last four digits of the social security number of the Settlement Class member requesting exclusion; must be signed by the individual who is electing to be excluded; and must be mailed to the Claims Administrator and postmarked on or before the end of the Exclusion Period. Timely submission of a fully completed and accurate Exclusion Form to the Claims Administrator as provided herein shall comply with these requirements. If an Exclusion Notice is submitted but is untimely or incomplete, Defendants may, at their sole discretion, waive the requirements above and accept the exclusion. Promptly upon receipt of any exclusion notice, the Claims Administrator shall identify to the Parties any exclusion notice submitted, and state whether it is defective in any way. The date of the postmark on the mailing envelope shall be the exclusive means to determine whether a request for exclusion is timely. Any Settlement Class member who timely requests exclusion in compliance with these requirements: (i) shall not have any rights under this Settlement Agreement; (ii) shall not be entitled to receive a Settlement Share; (iii) shall not be entitled to submit an objection to this Settlement Agreement; and (iv) shall not be bound by this Settlement Agreement, the Final Approval Order, or the Judgment. If a Settlement Class member submits both a claim and a request for exclusion, the Claims Administrator shall contact the Settlement Class member once by phone to determine whether he or she seeks to submit a claim or seeks to request exclusion. If the Claims Administrator is unable to reach the Settlement Class member, the request for exclusion shall be deemed invalid and the Settlement Class member shall be bound by and have the right to participate in the Settlement.

B. Binding Effect on Final Settlement Class Members. Except for those Settlement Class members who exclude themselves in compliance with the procedures set forth above, all Settlement Class members will be deemed to be Final Settlement Class members for all purposes under this Settlement Agreement; will be bound by the terms and conditions of this Settlement Agreement, the Final Approval Order, the Judgment, and the releases set forth herein; and, except as provided in paragraph VI.C, below, will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the settlement.

C. Right to Object. Any Final Settlement Class member, other than the Named Plaintiffs, may object to this settlement, provided that such objections are made in a writing and mailed to the Court, Claims Administrator, Class Counsel, and Defendants' Counsel so that it is postmarked no later than the last day of the Exclusion Period. Such objection



shall include the name and address of the objector and the basis for any objection and, if the objector is represented by counsel, the name and address of the objector's counsel. No Final Settlement Class member may be heard at the Final Settlement Hearing who has not complied with these requirements and any Final Settlement Class member who fails to comply with these requirements will be deemed to have waived any right to object and to any and all terms, provisions and conditions of the Settlement.

D. Communication Between Counsel Regarding Objections and Exclusions. Upon receipt, counsel for the Parties shall promptly exchange with one another and provide to the Claims Administrator copies of all objections, exclusions and/or challenges to the Settlement or to any part thereof.

E. Prohibition on Filing Complaints or Proceedings Pending Final Approval. From the date of entry of the Preliminary Approval Order through the date of the final approval hearing, Settlement Class members, including the Named Plaintiffs, who do not exclude themselves from the Settlement Class shall be prohibited from receiving any monetary recovery from a complaint or charge of any kind filed with the Division of Labor Standards Enforcement or from initiating or pursuing any lawsuit or other legal proceeding regarding any of the Released Claims as defined in Section X below.

F. Covenant Not to Sue or Participate in Any Other Action. Subject to the Court's granting of final approval of the settlement contemplated herein, any Settlement Class member who does not exclude him or herself from the settlement in compliance with the procedures set forth above shall be forever barred from filing any other action or proceeding or participating either as a named plaintiff or as an unnamed class member in any other lawsuit or class action in any state or federal court or administrative tribunal as permitted by law regarding any of the Released Claims as defined in Section X below.

## **VII. FINAL SETTLEMENT APPROVAL**

A hearing shall be held for the purpose of obtaining the Final Approval Order and entry of Judgment approving this Settlement Agreement and releasing the claims of the Final Settlement Class. The date of the hearing shall be set by the Court and notice of such shall be provided to Settlement Class members in the Class Notice, although such hearing may be continued by the Court without further notice to Settlement Class members.

## **VIII. SETTLEMENT TERMINATION**

A. Grounds for Settlement Termination. In accordance with the procedures specified in Section VIII.B below, this Settlement Agreement may be terminated on the following grounds:

1. Any Party may terminate the Settlement Agreement if the Court declines to enter the Preliminary Approval Order, Final Approval Order or Judgment in substantially the form submitted by the Parties, or the agreed-upon settlement does not become final for any other reason. Defendants may, at their sole discretion, terminate the Settlement Agreement if ten

percent (10%) or more of the Settlement Class members exclude themselves from the settlement. Defendants must exercise their right to withdraw by providing written notice to Class Counsel within twenty (20) days of receiving notice from the Claims Administrator that the total number of requests for exclusion has reached ten percent (10%). Defendants' Counsel shall be provided by the Claims Administrator with the identity of any Settlement Class member who excludes themselves from the settlement.

Recovery of attorneys' fees and costs by Class Counsel and enhancement award to the Named Plaintiffs are terms of this Settlement Agreement, but the allowance or disallowance by the Court of an award of attorneys' fees and/or costs and/or the enhancement award to the Named Plaintiffs are not part of this Settlement, and will be considered by the Court separately from the Court's consideration of the fairness, reasonableness, adequacy and good faith of this Settlement to the Final Settlement Class.

B. Procedures for Termination. To terminate this Settlement Agreement on one of the grounds specified above, the terminating Party shall give written notice to the other Party no later than ten (10) days after the Court acts (in the case of termination pursuant to Section VIII.A.1) or twenty (20) days of receiving notice from the Claims Administrator that the total number of requests for exclusion has reached ten percent (10%).

C. Effect of Termination. Termination of this Settlement Agreement shall have the following effects:

1. The Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms, except for those in paragraphs VIII.C, XI, XII and XIII;

2. The Preliminary Approval Order, Final Approval Order and Judgment shall be vacated;

3. The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the Settlement;

4. Neither this Settlement Agreement, nor any ancillary documents, actions, statements or filings in furtherance of the Settlement shall be admissible or offered into evidence in the Action or any other action for any purpose other than to enforce the terms of the Settlement.

5. The Parties shall stipulate to a schedule for the Action that is sufficient for the completion of additional discovery, dispositive motion practice (including decertification motions) and trial.

## **IX. SETTLEMENT PAYMENTS**

A. Defendants' Settlement Payment Obligations.

1. Reasonable Attorneys' Fees and Litigation Expenses. Class Counsel may request, without opposition from Defendants, that the Court award them reasonable attorneys' fees and costs in an amount up to and including \$2.3 million dollars. Defendants have agreed not to oppose such requests. The award of reasonable attorneys' fees and litigation costs granted by the Court will be paid out of the Maximum Settlement Amount. Any award of attorneys' fees and costs shall include and satisfy all past and future fees and costs incurred to prosecute, settle and administer the Action and this Settlement Agreement, including obtaining the Final Approval Order and Judgment. If the Court awards lesser amounts in attorneys' fees and/or costs to Class Counsel, the difference between the amounts allocated under this Settlement Agreement and the amounts awarded shall be included in the Maximum Distributable Amount (as defined in paragraph IX.A.5.)

2. Reasonable Expenses of the Claims Administrator. Defendants agree to pay all of the expenses of the Claims Administrator in administering the Settlement, outside of the Maximum Settlement Amount, not to exceed \$25,000.00.

3. Reasonable Enhancement Award to the Named Plaintiffs. Class Counsel have stated they will seek approval from the Court for a reasonable enhancement award to the Named Plaintiffs, and to the Estate of Jerrica Chou, who was formerly a named plaintiff but died during the pendency of the Action, in a total aggregate amount not to exceed a total of Fifty Thousand Dollars (\$50,000.00) to be paid out of the Maximum Settlement Amount, and Defendants have agreed not to oppose this request. The Enhancement Award shall be allocated \$17,500 each to Gloria Nelson and Julia Tellez, and \$15,000 to the Estate of Jerrica Chou. If the Court awards a lesser amount to the Named Plaintiffs, the difference between the amount allocated under this Settlement Agreement and the amount awarded shall be included in the Maximum Distributable Amount (as defined in paragraph IX.A.5).

This payment is in addition to each Named Plaintiffs' Settlement Share to which she may be entitled as a member of the Final Settlement Class. The Named Plaintiffs and the Estate of Jerrica Chou will receive an IRS Form 1099 for the portion of the settlement distributed to her or it that represents her or its respective enhancement payment. The Named Plaintiffs shall be responsible for properly declaring such income to the appropriate taxing authorities, and for paying any taxes due on such amounts. Any employer's withholding, payroll or other taxes that might be owed on this payment shall be paid by Defendants. In exchange for this enhancement award, the Named Plaintiffs (including Ms. Chou's estate) will enter into a binding general release of all known and unknown claims they may have against Defendants, subject to a waiver of the protections of Civil Code section 1542.

4. Civil Penalties Payable to the Labor & Workforce Development Agency. The Parties agree that Fifty Thousand Dollars (\$50,000.00) of the Maximum Settlement Amount is in consideration for a full and complete release of any claim that penalties may be owed pursuant to PAGA for the alleged violations of the Labor Code that were or could have been asserted in the Action. Of this amount, Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) will be distributed to the Labor & Workforce Development Agency ("LWDA") and

Twelve Thousand Five Hundred (\$12,500.00) will be included in the Maximum Distributable Amount and distributed to the Final Settlement Class members who submit valid Claim Forms, on a pro-rata basis, under the formulas described herein. If the LWDA demands more than the amount specified herein for civil penalties under PAGA, the Parties agree that the additional amount demanded by the LWDA may be paid from the Maximum Settlement Amount before distribution is made to Final Settlement Class Members who submit valid Claim Forms.

5. Allocations to the Settlement Class. The amount remaining from the Maximum Settlement Amount after deducting the reasonable attorneys’ fees and litigation costs, reasonable claims administration costs, reasonable enhancement payment, and payment to the LWDA actually awarded by the Court (the “Maximum Distributable Amount”), will be available for distribution on a claims-made basis to Final Settlement Class Members who file valid and timely Claim Forms in accordance with the formula set forth in Paragraph IX.B.2 of this Settlement Agreement. A minimum of 67.5% of the Maximum Distributable Amount shall be paid to the Final Settlement Class Members filing valid and timely Claim Forms. If the value of the actual validated claims is less than 67.5% of the Maximum Distributable Amount, the difference between 67.5% and amount of actual claims will be distributed *pro rata* among all Final Settlement Class Members who submitted valid Claim Forms. Any other unclaimed sums shall revert to Defendants.

B. Payment of Settlement Shares. The Maximum Distributable Amount shall be calculated and distributed as follows:

1. Allocation Between Subclasses. For purposes of distribution of payments among Final Settlement Class members, 98% of the Maximum Distributable Amount shall be allocated to the Live-In Subclass and 2% shall be allocated to the Overtime Subclass. If a Final Settlement Class member is a member of both subclasses, he or she shall be able to participate in both subclass recoveries. The Parties recognize and agree that the precise value of each Final Settlement Class member’s claims for disputed amounts of unpaid wages, interest, and penalties is extremely difficult to determine with any certainty for any given person, year, or at all, and is subject to a myriad of differing calculations and formulas. The Parties hereby agree that the formula for allocating payments to Final Settlement Class members as provided herein is reasonable and designed to provide a fair settlement to the Settlement Class Members, including both subclasses identified herein.

1. Calculation of Settlement Shares. Prior to mailing the Class Notice and Claim and Exclusion Forms, the Parties shall provide an agreed-upon calculation to the Claims Administrator with each Final Settlement Class member’s estimated Settlement Share, which shall be noted on the Claim Form. Settlement Shares shall be calculated using the following formulae:

(a) Live-In Subclass:

Est. Live-In Shifts Worked  
 ----- x Maximum Distributable Amount x .98 = Live-In Settlement Share  
 Total Est. Live-In Shifts Worked

(b) Overtime Subclass:

Individual Weeks Worked  
----- x Maximum Distributable Amount x .02 = Overtime Settlement Share  
Total Weeks Worked By Subclass

2. Valid and Timely Claim Forms Required for Payment. Each Final Settlement Class member who submits a valid and timely Claim Form shall be entitled to receive his or her Settlement Share(s), as provided herein, as well as any applicable Settlement Share Enhancement (as defined below).

2. Adjustment of Settlement Shares. Within five (5) days after the expiration of the Exclusion Period, the Claims Administrator shall inform the Parties in writing of the aggregate value of all timely and valid Claim Forms submitted during the Exclusion Period, to be paid from the Maximum Distributable Amount (the "Claimed Amounts"). If the aggregate value of the Claimed Amounts is less than 67.5% of the Maximum Distributable Amount, then the Claims Administrator shall (i) calculate the difference between the Claimed Amounts and 67.5% of the Maximum Distributable Amount; (ii) divide that sum by the total number of valid and timely Claim Forms submitted (the "Settlement Share Enhancement"); (iii) apply the above-referenced ratios for the Live-In and Overtime Settlement Shares (i.e., 98% and 2%, respectively) and (iv) add the value of the Settlement Share Enhancement(s) to the amount(s) otherwise payable to each Final Settlement Class Member who submitted a valid and timely Claim Form. If the aggregate value the Claimed Amounts exceeds 67.5% of the Maximum Distributable Amount, no further calculation is necessary and no Settlement Share Enhancement shall be paid.

3. Allocations of Settlement Payments and Taxes. All payments made to Settlement Class Members shall be allocated thirty-three and one-third percent (33 and 1/3%) to wages (subject to tax withholding), and sixty-six and two-thirds percent (66 and 2/3%) to interest and penalties (not subject to tax withholding). Defendants shall not make as part of this Settlement Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, 401(k), or profit sharing plans related to monies paid as a result of this Settlement Agreement.

4. Payment of Settlement Amounts to Claims Administrator. Defendants shall make payments to the Claims Administrator, as described below. If a payment becomes due on a weekend or a holiday, Defendants shall make such payment on or before the next business day following such weekend or holiday, as applicable. Until paid to the Claims Administrator (as provided herein), at no time shall Defendants have the obligation to segregate the funds comprising the Maximum Settlement Amount or Maximum Distributable Amount from its other assets. Defendants shall retain exclusive authority over, and responsibility for, those funds until paid.

(a) On or before the fifth (5th) day of the month which shall be at least (30) days from the Final Effective Date, Defendants shall pay the following sums to the Claims Administrator, who shall promptly remit those sums as provided herein:

(i) The amount of \$37,500.00 (or such other amount agreed to by the Parties and approved by the Court), to be paid to the Labor and Workforce Development Agency for the State of California, which represents 75% of the amounts allocated to the settlement of claims asserted under PAGA;

(ii) The amount approved by the Court for the Claims Administrator's services hereunder, or as otherwise agreed by the parties and the Claims Administrator;

(iii) The Attorneys Fees for Class Counsel approved by the Court; and

(iv) The total Claimed Amounts (enhanced, as applicable, pursuant to Section IX.B.4, above), as provided herein.

5. Timing of Payments to Final Settlement Class Members Who Submitted a Timely and Valid Claim Form, Enhancement Award, and Attorney's Fees. Payments to Final Settlement Class members who submitted valid and timely Claim Forms shall be made by the Claims Administrator within 30 days following payment of such amounts to the Claims Administrator by Defendants. All payments shall be sent to the applicable Final Settlement Class Members by First Class Mail and shall be less all applicable withholdings. Checks not negotiated within one hundred twenty (120) days from their issue are void and may not be recovered by the applicable Final Settlement Class Member. 50% of such amounts shall revert to a charitable organization of Defendants' choosing, and the remaining 50% shall be donated to a charitable organization of Plaintiffs' choosing, or such other non-profit charity or charities agreed upon by the Parties. All claiming Final Settlement Class Members shall be obligated to maintain a current address with the Claims Administrator for the receipt of their claimed amount.

C. Tax Reporting and Withholding. The Claims Administrator shall be responsible for ensuring that all taxes associated with the Settlement Agreement are timely paid to the appropriate authorities. The Claims Administrator's responsibilities include the following: (i) filing all federal, state and local employment tax returns, income tax returns, and other tax returns associated with the taxes, (ii) timely and proper filing of all required federal, state and local information returns (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, and (iii) completion of any other steps necessary for compliance with any tax obligations under federal, state and/or local law. In addition, the Claims Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph. Such elections shall be made in compliance with the procedures and requirements contained in the regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver all necessary documentation for signature as may be required, and thereafter to cause the appropriate filing of such documentation to occur.

**X. RELEASE OF CLAIMS; WAIVER; ASSIGNMENT OF RIGHTS.**

A. Release of Claims. Effective as of the Final Effective Date and in exchange for the consideration provided pursuant to this Settlement Agreement, Plaintiffs and each Final Settlement Class member releases Res-Care, Inc., RSCR California, Inc., and their past, present, and future parents, affiliates, subsidiaries, divisions, related business entities, predecessors, successors, partners, joint venturers, affiliated organizations, insurers and assigns, and each of their past, present and future shareholders, officers, directors, trustees, agents, employees, attorneys, contractors, representatives, partners, joint venturers, benefit plans, sponsored or administered by Res-Care, Inc. or RSCR California, Inc., divisions, units, branches, other persons or entities acting on its behalf (collectively, the “Released Persons”) from any and all claims, known and unknown, asserted in the Action or which could similarly arise under the Fair Labor Standards Act, including, but not limited to:

1. Damages and penalties arising from Defendants’ alleged non-payment of overtime pay and/or minimum wages, including claims brought pursuant to the Fair Labor Standards Act, California Labor Code §510, 558, 1197, 1198, 1182.12, Wage Orders 4, 5 or 15, or otherwise;
2. Damages and penalties under Labor Code section 204 regarding Defendants’ alleged payroll dates;
3. Damages and penalties pursuant to Labor Code section 226.7, 512, 1198 and/or any other provision of the Labor Code or applicable Wage Order regarding meal periods;
4. Waiting time penalties pursuant to Labor Code section 203 arising out of Defendants’ alleged failure to pay in a timely manner all overtime or minimum wages owed at termination pursuant to Labor Code sections 201 and/or 202;
5. Penalties and damages under Labor Code section 226 and 226.3 arising out of Defendants’ alleged failure to provide accurate wage statements;
6. Penalties and damages under Labor Code sections 210, 225.5, 510, 558, 1194, 1197, 1197.1 or 1198 arising from Defendants’ alleged Labor Code violations asserted in the Action;
7. Penalties under Labor Code section 2698 *et seq.* (“PAGA”) arising out of Res-Care, Inc.’s alleged violation of any Labor Code section alleged in the Action;
8. Damages and Penalties under Labor Code Sections 1174, 1174.5, and/or Wage Orders 4, 5, or 15; and
9. Claims for unfair business practices pursuant to Business and Professions Code sections 17200 *et seq.* premised on any of the acts mentioned above in Part X.A.1. through X.A.7 (inclusive) in connection with any Final

Settlement Class member's work as an employee of any Released Person in California at any time between November 4, 2005 and the date of the Court's preliminary approval of this class action settlement, under federal or California law, ordinance, and/or regulation, whether or not such claims are in the nature of back pay, damages, interest, penalties, attorneys' fees or injunctive relief, whether in contract, in equity, or pursuant to a statutory remedy.

The listing of certain provisions of the Labor Code and Wage Orders here are for example only, and do not limit in any way the nature of this release, which is intended by the Parties to encompass all wage and hour claims (including any interest, attorney's fees, or penalties associated therewith) that were asserted on behalf of the Settlement Class Members in the Action, which were alleged in Class Counsel's November 19, 2009 communications with the LWDA in association with the Action, and similar claims that could have been asserted under the FLSA.

B. Waiver of Civil Code Section 1542. The Final Settlement Class members acknowledge that they each may have claims within the description of paragraph X.A that are presently unknown and that the release contained in this Settlement Agreement is intended to and will fully, finally, and forever discharge all such claims, whether known or unknown, to the extent they fall within the description of claims being released above.

**ACCORDINGLY, EACH FINAL SETTLEMENT CLASS MEMBER EXPRESSLY UNDERSTANDS AND AGREES TO WAIVE THE PROVISIONS OF, AND RELINQUISH ALL RIGHTS AND BENEFITS AFFORDED BY, CIVIL CODE SECTION 1542, AS TO THE RELEASED CLAIMS ONLY. CIVIL CODE SECTION 1542 PROVIDES IN FULL AS FOLLOWS:**

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

In giving this waiver, the Final Settlement Class members acknowledge that they may hereafter discover facts in addition to or different from those which they now believe to be true with respect to the released claims, but agree that they have taken that possibility into account in reaching this Settlement Agreement and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Final Settlement Class Members expressly assume the risk, they freely and voluntarily give the release as set forth above.

C. Waiver of Labor Code Section 206.5. The Final Settlement Class Members acknowledge and agree that their claims for failure to pay wages, including applicable minimum wages and overtime wages, of taking unauthorized deductions for meals or lodging, failure to



provide itemized wage statements and pay wages timely upon termination in the Action are disputed and that Labor Code section 206.5 is therefore not applicable to the Parties hereto. That section provides in pertinent part as follows:

**No employer shall require the execution of any release of any claim or right on account of wages due or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.**

D. Release of Attorney's Fees Claims. Class Counsel fully and finally releases, following Defendants' payment of the approved attorneys' fees payable pursuant to the terms of this Settlement Agreement, the Released Persons from any claims they have related to issuance of such payment.

E. Released Claims. All of the claims, known or unknown, asserted or unasserted, which are waived and released under paragraphs X.A, B, C and D above are referred to herein as the "Released Claims."

F. Assignment. Plaintiffs, for themselves and on behalf of the other Final Settlement Class members, represent and warrant that nothing which would otherwise be released herein has been assigned, transferred, or hypothecated or purportedly assigned, transferred, or hypothecated.

G. Waiver of Appeal. Any Final Settlement Class member who does not submit a valid objection to the Settlement waives any and all rights to appeal from the Final Approval Order and Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding such as a motion to vacate judgment, motion for new trial, a motion under Code of Civil Procedure section 473 and extraordinary writs. This waiver does not include a waiver of the right to oppose any appeals, appellate proceedings or post-judgment proceedings, if any.

H. General Release of Claims by Named Plaintiffs. In exchange for the consideration set forth in this Settlement Agreement, which includes consideration beyond which the Final Class Members will be entitled to receive before entering into this Settlement Agreement, the receipt and sufficiency of which is expressly acknowledged, in addition to releasing the Released Claims as set forth above, the Named Plaintiffs and the Estate of Jerrica Chou, on behalf of themselves and their respective heirs, executors, administrators, attorneys, agents, representatives and assigns, does hereby and forever release, waive, acquit and discharge the Released Persons from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees of every kind and character, known or unknown, existing or contingent, latent or patent, including but not limited to the matters alleged in, arising from or related to the Named Plaintiffs' employment with Defendants, the cessation of said employment or the filing, prosecution or defense of the Action ("the General Release").

It is the intention of Named Plaintiffs, the Estate of Jerrica Chou, and Defendants that the General Release entered into by the Named Plaintiffs as a part of this Settlement Agreement

shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected. In furtherance of this intention, the Named Plaintiffs and the Estate of Jerrica Chou hereby expressly waive any and all rights or benefits conferred upon them by the provisions of Section 1542 of the Civil Code, which reads as follows:

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

Named Plaintiffs, the Estate of Jerrica Chou, and Defendants hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the Civil Code was bargained for separately. The Named Plaintiffs and the Estate of Jerrica Chou expressly agree that the release provisions herein contained shall be given full force and effect in accordance with each and all of their express terms and provisions, including but not limited to those terms and provisions relating to unknown or unsuspected claims, demands and causes of action hereinabove specified. The Named Plaintiffs and the Estate of Jerrica Chou specifically agree to assume the risk of the subsequent discovery or understanding of any matter, fact or law which if now known or understood would in any respect have affected this Settlement Agreement.

**XI. INADMISSIBILITY OF SETTLEMENT AGREEMENT/DENIAL OF LIABILITY**

This Settlement Agreement is the result of a good faith compromise of disputed claims, and neither it nor any statement or conduct in furtherance of the settlement shall be offered or construed to be an admission or concession of any kind by any Party. In particular, but without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever by Defendants, which expressly denies any liability, wrongdoing, impropriety, responsibility, or fault whatsoever. In addition, and also without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission or evidence of the propriety or feasibility of certifying or maintaining a class in the Action or any other action for adversarial, rather than settlement purposes.

**XII. COMMUNICATIONS REGARDING SETTLEMENT**

Prior to Final Approval, no Party shall make any statements to the press or media regarding the Settlement, other than to state "the Parties have settled the case on mutually agreeable terms, subject to final approval by the Court." After Final Approval, Class Counsel or Plaintiffs are permitted to send a press release and publish results of the matter on their respective websites.

The content of the press release regarding the merits of the case will be restricted to the following:

“ResCare Settles Class Action Lawsuit for 1,600 Employees over Payment for ‘Sleep Time’

In *Nelson v. RSCR California, Inc. and Res-Care, Inc.*, Superior Court for Contra Costa California, Inc., No. MSC 09-03073, the Plaintiff class members are current and former employee care givers for ResCare, the nation’s largest private provider of home care services for the elderly and disabled. There are approximately 1,600 class members. The case was hotly disputed both factually and legally, but ultimately through mediation we reached a settlement with a maximum value of [amount to be determined at final approval] with ResCare that made live-in homecare workers eligible for substantial additional payments for their live-in work.

A primary issue in the case was the compensability of employee “sleep time” on 24-hour shifts. ResCare generally paid employees for 16 hours worked on live-in shifts and excluded 8 hours for sleep. Plaintiffs argued that the existing California case law in *Monzon v. Schaefer Ambulance Service, Inc.* (1990) 224 Cal.App.3d 16 and *Seymore v. Metson Marine, Inc.* (2011) 194 Cal.App.4th 361, were wrongly decided by the California Court of Appeals in permitting the enforceability of agreements to exclude sleep time from otherwise compensable hours worked by 24 hour employees. On this issue, the California Supreme Court has granted review of *Mendiola v. CPS Security Solutions, Inc.* (Case No. S212704), a case in which the plaintiffs directly challenged the enforceability of such agreements. Hearing on *Mendiola* is not yet scheduled, but will likely be heard in the 2015 California Supreme Court docket. *Mendiola* made the state of the law uncertain for both parties; and instead of waiting for the California Supreme Court to resolve the ‘sleep time’ issue through *Mendiola*, the parties resolved the issue through settlement. The settlement states specifically that ResCare has not admitted liability and resolved a contested claim.

‘We are proud to have represented these individuals, and were pleased that the parties were able to resolve this dispute through settlement, rather than continuing to litigate these disputed claims. We have been litigating for over five years and we felt that waiting for further appeals of *Mendiola* that could take an undetermined amount of time, we felt that it was the best interest of the class to resolve it now instead of waiting. Our clients really believe in the work they do caring for the elderly and disabled with ResCare. This settlement will help our clients continue with that work,’ said class counsel Stephen Sommers.

The case was filed on November 4, 2009 and covers approximately 1,600 current and former employees over a nine 9 year span.”

If Class Counsel or Named Plaintiffs are contacted by the media after Final Approval, their comments will be restricted to the comments in the press release. Further, nothing herein shall be construed to prevent Class Counsel from communicating with Settlement Class members or their representatives about this Settlement; or to prevent the Parties or their representatives from communicating with accountants or legal advisors regarding the Settlement. Additionally, nothing herein shall be construed to prevent Class Counsel from referring to this settlement in future applications in other matters to prove their adequacy as attorneys for a putative class or to justify an award of attorney's fees.

### **XIII. INTERIM STAY OF PROCEEDINGS**

Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the Settlement itself.

### **XIV. NOTICES**

All notices, requests, demands and other communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing and, except as provided elsewhere in this Settlement Agreement or in any communication to the Settlement Class, shall be delivered personally or via postage prepaid first-class mail as follows:

If to Plaintiffs or Class Counsel, then to:

Stephen A. Sommers	Miles Locker
Samantha R. Pungpakearti	Rachel Folberg
<b>SOMMERS EMPLOYMENT</b>	<b>LOCKER FOLBERG LLP</b>
<b>LAW GROUP, P.C.</b>	71 Stevenson Street,
201 Mission Street	Suite 422
Suite 1330	San Francisco, CA 94105
San Francisco, CA 94105	Tel: 415.962.1626 x 1001
Tel: (415) 524-2860	Fax: 415.962.1628

If to Defendants or Defendants' Counsel, then to:

Ronald G. Polly, Jr.  
Matthew A. Boyd  
Hawkins Parnell Thackston & Young LLP  
4000 SunTrust Plaza  
303 Peachtree Street, NE  
Atlanta, GA 30308  
Telephone: (404) 614-7400  
Facsimile: (404) 614-7500

### **XV. RETENTION OF JURISDICTION BY THE COURT**

Following entry of the Final Approval Order and Judgment pursuant to this Settlement Agreement, the Court shall retain jurisdiction pursuant to Code of Civil Procedure section 664.6 for the purpose of addressing any issues which may arise with respect to settlement

administration or the enforcement of the terms of this Settlement Agreement or any protective orders previously entered in the Action.

**XVI. ENTIRE AGREEMENT**

This Settlement Agreement and its associated Exhibits set forth the entire agreement of the Parties with respect to their subject matter and supersede any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, promises or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement.

**XVII. MODIFICATION OR AMENDMENT**

This Settlement Agreement may not be modified, amended or altered except in a writing signed by each Party whose rights or obligations hereunder would be affected thereby or by that Party's authorized legal representative, or as ordered by the Court. A signature by Class Counsel Stephen Sommers shall bind the Final Settlement Class.

**XVIII. CHOICE OF LAW**

This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

**XIX. CONSTRUCTION**

This Settlement Agreement is entered into freely and voluntarily, with each Party having been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Settlement Agreement. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one Party or another. All Parties waive the provisions of Civil Code section 654, which provides, in pertinent part, that "the language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist."

**XX. EXECUTION IN COUNTERPARTS**

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signature to this Settlement Agreement transmitted by facsimile or electronic mail and any copies of any signatures are valid and binding.

**XXI. AUTHORITY**

The individuals signing this Settlement Agreement on behalf of Defendants represent and warrant that they are duly authorized to do so. Counsel for the Parties likewise represent and warrant that they are duly authorized by their respective clients to approve this Settlement Agreement and to take all appropriate action required and permitted to be taken by this Settlement Agreement.

## **XXII. CIRCULAR 230 DISCLAIMER**

The Parties acknowledge and agree that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors is or was intended to be, nor shall any communication or disclosure constitute or be construed or be relied upon as tax advice within the meaning of the United States Treasury Department Circular 230 (31 (CFR Part 10, as amended)); (2) Each Party (a) has relied exclusively upon his, her or its own, independent legal and tax advisors for advice (including tax advice) in connection with this Settlement Agreement (b) has not entered into this Settlement Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the Party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney's or advisor's tax strategies (regardless whether such limitation is legally binding) upon disclosure by the Party of the tax treatment or tax structure of any transaction, including transaction contemplated by this Settlement Agreement.

## **XXIII. REASONABLE COOPERATION**

The Parties shall provide reasonable cooperation with one another and the Claims Administrator in implementing this Settlement Agreement, including but not limited to providing information and executing documents necessary to effectuating its purpose.

## **XXIV. MISCELLANEOUS**

A. Headings. The headings in this Settlement Agreement are included for convenience only and shall not be given weight in its construction.

B. Signatures. Facsimile or e-mail transmissions of the signatures or digital signatures of the Parties or their representatives shall be binding on the Parties.

**IN WITNESS WHEREOF**, this Settlement Agreement, consisting of twenty-one (22) pages (including signature pages), has been duly executed by and on behalf of the Parties as of the date first written above.

DATED:

GLORIA NELSON

DATED:

JULIA TELLEZ

RES-CARE, INC.

DATED:

By:

RSCR CALIFORNIA, INC.

DATED: \_\_\_\_\_

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

**APPROVED AS TO  
FORM & CONTENT:**

SOMMERS EMPLOYMENT LAW GROUP,  
P.C.

By:

Stephen A. Sommers, Esq.  
Lead Counsel for Plaintiffs

**APPROVED AS TO  
FORM & CONTENT:**

HAWKINS PARNELL THACKSTON &  
YOUNG LLP

By:

Counsel for Defendants

Ronald G. Polly,

EXHIBIT A

[CLAIM AND EXCLUSION FORM]

Gloria Nelson et al. v. RSCR California, Inc., et al.

Case No. MSC09-03073.

CLASS MEMBER CLAIM/EXCLUSION FORM

TO PARTICIPATE OR EXCLUDE YOURSELF FROM THIS CLASS ACTION,  
YOU MUST COMPLETE THIS FORM AND RETURN IT TO [CLAIMS  
ADMINISTRATOR ADDRESS] NO LATER THAN [DATE.]

I, \_\_\_\_\_, wish to: (choose **one** of the following)

Participate in this Class Action lawsuit, which may entitle me to the monetary settlement stated on the Class Notice included with this claim form. I further understand that by participating I am releasing the Defendants from all claims in the above captioned lawsuit; or

Exclude myself from this Class Action lawsuit. If I exclude myself I understand that I will receive no money or other benefits from this lawsuit, and I will not be waiving any wage and hour claims I may have against the Defendants.

Your Current Address:

\_\_\_\_\_  
\_\_\_\_\_

Last Four Digits of Social Security Number: \_\_\_\_\_

Current Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

RETURN THIS FORM NO LATER THAN [DATE] TO [CLAIMS  
ADMINISTRATOR ADDRESS]. IF THIS FORM IS NOT POSTMARKED BY  
[DATE], YOU WILL NOT BE ELIGIBLE TO RECEIVE ANY MONEY OR OTHER



BENEFITS FROM THIS LAWSUIT, AND YOU WILL WAIVE IMPORTANT RIGHTS.

**EXHIBIT B**

**[CLASS NOTICE FORM]**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF CONTRA COSTA**

**GLORIA NELSON and JULIE TELLEZ,  
individually, and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**v.**

**RES-CARE, INC. AND RSCR  
CALIFORNIA, INC.**

**Defendants.**

**Case No. MSC09-03073**

**NOTICE OF CLASS ACTION  
SETTLEMENT AND FINAL APPROVAL  
HEARING**

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

***This is a court authorized notice. This is not a solicitation from a lawyer.***

**PLEASE READ THIS NOTICE CAREFULLY**

**IT MAY AFFECT YOUR LEGAL RIGHTS TO OBTAIN A SHARE OF THE THIS  
CLASS ACTION SETTLEMENT AND YOUR RIGHT TO OBJECT TO THE  
SETTLEMENT.**

**IF YOU WISH TO OBTAIN MONEY FROM THE SETTLEMENT, YOU MUST  
COMPLETE AND RETURN YOUR COMPLETED CLAIM FORM ON OR BEFORE  
[DATE 60 days from Mailing] \_\_\_\_\_, 2014.**

**IF YOU WISH TO OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE  
DIRECTIONS IN THE NOTICE.**

### **WHAT IS THIS NOTICE ABOUT?**

- A proposed settlement (the “Settlement”) has been reached between Plaintiffs GLORIA NELSON and JULIE TELLEZ, individually and on behalf of all others similarly situated (“Plaintiffs”), and Defendants RSCR CALIFORNIA, INC. and its parent company RES-CARE, INC. (collectively, “RSCR” or “Defendants”) resolving all of the claims in the class action pending in the Court brought on behalf of the Class Members against Defendants.
- The Court has preliminarily approved the Settlement. You have received this notice because Defendant’s records indicate that you are a Class Member. This notice is being mailed to Class Members pursuant to Court Order to notify Class Members of the following: (1) the Court’s Order of Preliminary Approval of the Settlement of this Class Action; (2) the scheduled Court hearing for final approval of the Class Settlement on [DATE]; (3) the process for Participating Class Members to submit claims for money under the Settlement; and (4) the process for Class Members to Object to the Settlement.
- **TO COLLECT MONEY PURSUANT TO THIS SETTLEMENT, YOU MUST SUBMIT A CLAIM FORM NO LATER THAN [DATE 60 DAYS FROM MAILING], 2014.**

### **WHAT IS THIS LAWSUIT ABOUT?**

There is now pending in the Superior Court of Contra Costa, California a lawsuit against RSCR for violations of California employment and unfair competition laws. The Superior Court of California has allowed this lawsuit to proceed as a class action on behalf of the following people:

- All personal care attendants employed by RSCR from November 4, 2005 to the present who worked one or more 24-hour shifts and were compensated for 16 hours of work (the “sleep time class”).
- All personal care attendants employed by RSCR from November 4, 2005 to the present who worked one or more 24-hour shifts for which meals and lodging were credited against minimum wage (the “meals and lodging class”).
- All personal care attendants employed by RSCR from November 4, 2005 to the present who worked at a licensed care facility and were not paid overtime compensation for hours worked in excess of 8 hours in one day or in excess of 40 hours in one week (the “overtime class”).

The Plaintiffs in this litigation allege that Defendants violated applicable state minimum wage and overtime laws by:

- Unlawfully deducting eight hours of sleep time from every 24 hour shift, regardless of whether any sleep time was taken;
- Unlawfully crediting amounts for meals and lodging against their minimum wage obligations;
- Failing to pay overtime for all hours worked over eight hours in one day and forty hours in one week for employees assigned to care for clients at licensed care facilities.

Plaintiffs also allege claims for waiting time penalties, inaccurate wage statements and unfair competition, which are derivative of the claims listed above. Defendants deny all of the allegations made by Plaintiffs in the complaint.

Defendants deny that they have done anything wrong. However, the parties have agreed to settle the class action without determination as to whether Defendants have done anything wrong, and the Court has preliminarily approved the terms of the settlement. Your legal rights are affected by this settlement. You have a choice to make now concerning these rights. You may do nothing, you may object to the settlement; or you may submit a claim form for money that you may be entitled to as part of this settlement. These options are explained below:

<b>Your Legal Rights and Options in this Lawsuit</b>	
<b>IF YOU WANT TO SUBMIT A CLAIM FOR MONEY</b>	<p style="text-align: center;"><b>You can submit the claim form attached to this Notice. Payments to claimants will be determined based on the amount you worked for Defendants. You must submit a valid claim form by [date 60 days from mailing] to be eligible to receive any money.</b></p> <p style="text-align: center;">If you submit a claim form, the amount you are entitled to receive will be calculated based on how much you worked. These calculations are explained in more detail on page 4.</p>
<b>IF YOU WANT TO OBJECT TO THE SETTLEMENT</b>	<p style="text-align: center;"><b>The Court will hold a final approval hearing regarding the proposed terms of the settlement. Any class member has the right to file an objection to the Settlement with the Court or to appear in Court at this hearing to object to the terms of the settlement. The hearing will be held at the Superior Court of the State of California County of Contra Costa, Department 9, located at 725 Court Street, Martinez, California 94553 on [date] at 9:00 a.m.</b></p>

	<p><b>Objections must be filed with the Court no later than [date 60 days from Notice.]</b></p> <p>There is no guarantee that the Court will approve or disapprove of the settlement based on your objection.</p>
<p><b>IF YOU DO NOTHING:</b></p>	<p><b>If the Court grants final approval of the settlement terms, you will receive no settlement funds. You will not be able to maintain a separate lawsuit concerning the claims giving rise to this lawsuit.</b></p> <p>By doing nothing, you will not get any money or benefits. You give up any rights to sue Defendants separately about the same legal claims in this lawsuit.</p>

- TO SUBMIT A CLAIM, YOUR CLAIM FORM MUST BE POSTMARKED NO LATER THAN [60 days from mailing]. TO OBJECT TO THE TERMS OF THE SETTLEMENT, YOU MUST FILE A WRITTEN OBJECTION WITH THE COURT NO LATER THAN [60 days from mailing]. IF YOU DO NOTHING, YOU WILL RECEIVE NO MONEY FROM THIS SETTLEMENT, YOU WILL WAIVE THE RIGHT TO SUE THE DEFENDANTS ON YOUR OWN, AND YOU WILL BE BOUND BY ALL OF THE ORDERS OR JUDGMENTS THAT THE COURT MAY ISSUE IN THIS CASE.

**WHAT WILL I RECEIVE FROM THE SETTLEMENT?**

- There will be \$6,150,000 (the “Maximum Distributable Amount”) in available funds to pay out Participating Class Members (“Class Claimants”). 98% of this amount will be devoted to Class Claimants employed as “live-in” caregivers, and 2% of this amount will be devoted to Class Claimants employed in healthcare facilities. Class claimants will be entitled to receive payment based on the following formula:
  - Members of the Meal and Lodging and/or Sleep time subclasses, (hereinafter the “Live-In” subclasses) will be paid based on the following formula:

$$\frac{\text{Est. Live-In Shifts Worked}}{\text{Est. Total Live-In Shifts Worked}} \times \text{Maximum Distributable Amount} \times .98 = \text{Live-In Settlement Share}$$

- Members of the Overtime subclass will be paid based on the following formula:

$$\frac{\text{Est. Individual Weeks Worked}}{\text{Est. Total Weeks Worked By Subclass}} \times \text{Maximum Distributable Amount} \times .02 = \text{Overtime Settlement Share}$$

- If the at least 67.5% of the Class submits a timely and valid Claim Form, the entire Maximum Distributable Amount shall be paid to each Class Claimant according to the above formulae.
- If the total number of timely and valid claims is less than 67.5% of the total number of Class Members, then the difference between the Claimed Amounts and 67.5% of the Maximum Distributable Amount shall be distributed to each Class Claimant on a pro rata basis.
- Under no circumstances will less than \$4,151,250 (the “Minimum Distributable Amount”) be distributed amongst all Class Claimants according to the formulae above.
- All payments made to Class Claimants shall be allocated thirty-three and one-third percent (33 and 1/3%) to wages (subject to tax withholding), and sixty-six and two-thirds percent (66 and 2/3%) to interest and penalties (not subject to tax withholding). Class Claimants who receive any payment not subject to withholding are fully responsible for paying any other applicable taxes for such payments.

**DISTRIBUTION OF REMAINING SETTLEMENT FUNDS**

- Enhancement awards shall be paid to the two Named Plaintiffs, and to the Estate of Jerrica Chou, who was formerly a named plaintiff but died during the pendency of the Action, in a total aggregate amount not to exceed a total of Fifty Thousand Dollars (\$50,000.00) to be paid out of the Maximum Settlement Amount. The Enhancement Award shall be allocated \$17,500 each to Gloria Nelson and Julia Tellez, and \$15,000 to the Estate of Jerrica Chou.
- \$50,000 shall be paid to pursuant to the Private Attorneys General Act to settle any claims for penalties for violations of the California Labor Code. Of this amount, \$35,000 will be distributed to the California Labor Workforce and Development Agency

("LWDA") and \$12,500 will be included in the Maximum Distributable Amount and distributed to Class Claimants.

- Upon Final Approval of this Settlement by the Court, Class Counsel for Plaintiffs shall apply to the Court for attorneys' fees and costs in an amount up to and including \$2.3 million dollars.

#### **DEADLINE TO SUBMIT A CLAIM AND CLAIM INSTRUCTIONS**

- Your Claim form must be **postmarked** no later than [date 60 days following mailing]. Please send your claim forms to the address listed on the claim form.\_\_\_\_\_.
- Claim forms postmarked after the deadline will be untimely and invalid and will not be considered.

#### **PROCESS FOR OBJECTING TO THE SETTLEMENT**

- Any Class Member, other than the Named Plaintiffs, may object to this settlement, provided that such objections are made in a writing and mailed to the Court, Claims Administrator, Class Counsel, and Defendants' Counsel so that it is postmarked no later than [date 60 days following mailing of notice]. Such objection shall include the name and address of the objector and the basis for any objection and, if the objector is represented by counsel, the name and address of the objector's counsel. No Final Settlement Class member may be heard at the Final Settlement Hearing who has not complied with these requirements and any Final Settlement Class member who fails to comply with these requirements will be deemed to have waived any right to object and to any and all terms, provisions and conditions of the Settlement.
- Any objections may be heard at the Final Approval Hearing, which will be held at the **Superior Court of the State of California County of Contra Costa, Department 9, located at 725 Court Street, Martinez, California 94553 on [date] at 9:00 a.m.**
- To object, you must send a written objection or a written notice of your intent to appear and object at the final approval hearing to the Court, counsel, and the Settlement Administrator at the addresses shown below:

CLASS COUNSEL:

Stephen A. Sommers  
Samantha R. Pungprakearti  
**Sommers Employment Law Group, P.C.**  
201 Mission Street  
Suite 1330  
San Francisco, CA 94105  
Tel: (415) 524-2860  
Fax: (415) 524-2865

Miles Locker  
Rachel Folberg  
**Locker Folberg LLP**  
71 Stevenson Street,  
Suite 422  
San Francisco, CA 94105  
Tel: 415.962.1626 x 1001  
Fax: 415.962.1628

DEFENDANT’S COUNSEL:

Ronald G. Polly, Jr.  
Matthew A. Boyd  
Hawkins Parnell Thackston & Young LLP  
4000 SunTrust Plaza  
303 Peachtree Street, NE  
Atlanta, GA 30308  
Telephone: (404) 614-7400  
Facsimile: (404) 614-7500

SETTLEMENT ADMINISTRATOR

Simpluris, Inc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DO NOT TELEPHONE THE COURT OR DEFENDANT’S COUNSEL**



### WHAT RIGHTS AM I RELEASING?

- **Class Members Release:** The Settling Class, their heirs, successors and assigns, and Defendants and their respective parents, heirs, assigns, subsidiaries, affiliates, and related entities or corporations, and any of their past and present officers, directors, shareholders, employers, employees, agents, partners, attorneys, heirs, successors, and assigns, will waive, release, acquit and forever discharge each other from all claims in this lawsuit, and any and all claims, actions, charges, complaints, grievances and causes of action (hereinafter collectively referred to as “claims”), of whatever nature, whether known or unknown, which exist or may exist on their behalf as of the date of this Agreement that are in any way related to the subject matter of this class action, including but not limited to any and all claims asserted therein on any theory whatsoever, and any and all wage claims or labor code claims.
- **Waiver of Unknown Claims.** If you later discover facts in addition to or different from those you know or believe to be true with respect to the subject matter of the released claims above, those claims will remain released and forever barred. Therefore, as Class Members, you expressly waive and relinquish any and all claims, rights or benefits that you may have under California Civil Code section 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release which if known by him/her must have materially affected his/her settlement with the debtor.”

### GETTING MORE INFORMATION

If you feel you need more information, you may inquire of Class Counsel in writing or by telephone as follows:

Stephen A. Sommers  
Samantha R. Pungprakearti  
**Sommers Employment Law Group, P.C.**  
201 Mission Street  
Suite 1330  
San Francisco, CA 94105  
Tel: (415) 524-2860  
Fax: (415) 524-2865

**PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. YOU MAY, HOWEVER, CALL CLASS COUNSEL LISTED ABOVE**

BY ORDER OF THE CONTRA COSTA SUPERIOR COURT  
THE HONORABLE JUDITH CRADDICK

**EXHIBIT C**

**[PROPOSED FINAL APPROVAL ORDER]**

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SAMANTHA R. PUNGPRAKEARTI, SBN 264919  
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Attorneys for Plaintiffs GLORIA NELSON and JULIE TELLEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA  
UNLIMITED JURISDICTION**

GLORIA NELSON, AND JULIE TELLEZ  
individually, and, on behalf of all others similarly  
situated,

Plaintiffs,

v.

RES-CARE, INC. and RSCR CALIFORNIA, INC.,

Defendants.

) Case No. MSC09-03073

) CLASS ACTION

) **[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

Plaintiffs' Motion for Final Approval of Class Action Settlement came on for hearing on \_\_\_\_\_ . All parties appeared through counsel, as stated on the record. The Court, having considered Plaintiffs' Motion for Final Approval of Class Action Settlement ("Motion"), having considered all of the submissions and arguments with respect to the Motion, and GOOD CAUSE APPEARING, the Court finds, orders and adjudges as follows:

1. This matter has been previously certified as a class action, and otherwise satisfies the requirements for the certification of a class for settlement purposes. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1160-62 (2000); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1805-06 (1996).

2. The Court hereby confirms the appointment of Class Counsel Stephen A. Sommers and Samantha R. Pungprakearti of the Sommers Employment Law Group, and Miles Locker and Rachel Folberg of Locker Folberg, LLP.

3. Notice to the Settlement Class has been provided in accordance with the proposal described in the parties' Memorandum in Support of Joint Motion for Preliminary Approval of Settlement, and documents submitted in connection therewith, which was approved and adopted by this Court on \_\_\_\_\_, and such notice by mail has been given in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances, and satisfies the requirements of due process. The notice apprised the members of the Settlement Class of the pendency of the litigation, of all material elements of the proposed settlement, of the *res judicata* effect of approval of the settlement on the members of the Settlement Class, and of their opportunity to exclude themselves from the Settlement Class, to object to the settlement, and to appear at the Final Approval Hearing. Full opportunity has been afforded to the members of the Settlement Class to participate in the Final Approval Hearing.

Accordingly, the Court determines that all members of the Settlement Class (except those who excluded themselves from the settlement) are bound by this Order and Final Judgment. A list of those persons who have excluded themselves from the settlement is attached hereto as Exhibit A.

4. The Settlement Agreement was arrived at as a result of arms-length negotiations conducted in good faith by counsel for the parties, with the assistance of an experienced third-party mediator.

5. This case presents difficult and complex issues as to liability and damages as to which there are substantial grounds for difference of opinion.

6. The settlement, as set forth in the Settlement Agreement, is fair, reasonable and adequate in light of the complexity, expense and duration of litigation and the risks involved in establishing liability, damages and in maintaining the class action through trial and appeal.

7. The promises and commitments of the parties under the terms of the Settlement Agreement constitute fair value given in exchange for the releases of the Settled Claims against the Released Parties as those terms are defined in the Settlement Agreement.

8. The Parties and each Settlement Class Member have irrevocably submitted to the jurisdiction of this Court for any suit, action, proceeding or dispute arising out of the Settlement Agreement.

9. Any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any Released Party which in any way relates to the applicability or scope of the Settlement Agreement or this Order Granting Final Approval of Settlement and Entering Final Judgment and Order of Dismissal must be presented exclusively to this Court for resolution by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiffs' Motion for Final Approval of Class Action Settlement is GRANTED.

2. This action is certified as a class action for purpose of settlement on behalf of a Settlement Class consisting of any person employed by RSCR California, Inc. in California at any time during the Class Period of November 4, 2005 through the date of the Court's preliminary approval of this class action settlement, who have not timely and validly excluded themselves from the Class, and who fall into one or both of the following two groups:

(i) The “Live-In Subclass”, which includes any employee who worked for a RSCR California, Inc. in California as direct care staff during the Class Period, and who worked at least one (1) Live-In Shift during the Class Period; and

(ii) The “Overtime Subclass”, which includes any employee who worked for RSCR California, Inc. as direct care staff during the Class Period and who during the Class Period provided services to a client of Defendant(s) who resided in a licensed medical facility (“Facility”) and who may have worked (i) more than 40 hours in a workweek and/or (ii) eight (8) hours in a work day, in a week where work was performed by such Settlement Class Member in a Facility.

3. The Settlement Agreement is finally approved as fair, reasonable and adequate and in the best interests of the Settlement Class, and the parties are directed to consummate the settlement in accordance with the terms of the Settlement Agreement.

4. This action is hereby dismissed with prejudice.

5. Class Counsel have applied for an award of attorneys' fees and expenses to be paid by Defendants pursuant to the terms of the Settlement Agreement. This Court awards Class Counsel attorneys' fees and expenses of \$2.3 million dollars (\$2,300,000) to be paid in accordance with the terms of the Settlement Agreement. Said fees and expenses have been determined by the Court to be fair, reasonable and appropriate. No other fees, costs or expenses may be awarded to Class Counsel in connection with this action and shall be paid in accordance with the Settlement Agreement. The Court further awards a reasonable enhancement award to the Named Plaintiffs, and to the Estate of Jerrica Chou, in a total aggregate amount of Fifty Thousand Dollars (\$50,000.00), to be paid out of the Maximum Settlement Amount and allocated as follows: \$17,500 to Gloria Nelson; \$17,500 to Julia Tellez; and \$15,000 to the Estate of Jerrica Chou.

6. By this order and judgment, Plaintiffs and each Final Settlement Class Member releases Res-Care, Inc., RSCR California, Inc., and their past, present, and future parents, affiliates, subsidiaries, divisions, related business entities, predecessors, successors, partners,

joint venturers, affiliated organizations, insurers and assigns, and each of their past, present and future shareholders, officers, directors, trustees, agents, employees, attorneys, contractors, representatives, partners, joint venturers, benefit plans, sponsored or administered by Res-Care, Inc. or RSCR California, Inc., divisions, units, branches, other persons or entities acting on its behalf (collectively, the “Released Persons”) from any and all claims, known and unknown, asserted in the Action or which could similarly arise under the Fair Labor Standards Act, including, but not limited to:

1. Damages and penalties arising from Defendants’ alleged non-payment of overtime pay and/or minimum wages, including claims brought pursuant to the Fair Labor Standards Act, California Labor Code §510, 558, 1197, 1198, 1182.12, Wage Orders 4, 5 or 15, or otherwise;
2. Damages and penalties under Labor Code section 204 regarding Defendants’ alleged payroll dates;
3. Damages and penalties pursuant to Labor Code section 226.7, 512, 1198 and/or any other provision of the Labor Code or applicable Wage Order regarding meal periods;
4. Waiting time penalties pursuant to Labor Code section 203 arising out of Defendants’ alleged failure to pay in a timely manner all overtime or minimum wages owed at termination pursuant to Labor Code sections 201 and/or 202;
5. Penalties and damages under Labor Code section 226 and 226.3 arising out of Defendants’ alleged failure to provide accurate wage statements;
6. Penalties and damages under Labor Code sections 210, 225.5, 510, 558, 1194, 1197, 1197.1 or 1198 arising from Defendants’ alleged Labor Code violations asserted in the Action;
7. Penalties under Labor Code section 2698 *et seq.* (“PAGA”) arising out of Res-Care, Inc.’s alleged violation of any Labor Code section alleged in the Action;
8. Damages and Penalties under Labor Code Sections 1174, 1174.5, and/or Wage Orders 4, 5, or 15; and
9. Claims for unfair business practices pursuant to Business and Professions Code sections 17200 *et seq.* premised on any of the acts mentioned above in Part X.A.1. through X.A.7 (inclusive) in connection with any Final Settlement Class member’s work as an employee of any Released Person in California at any time between November 4, 2005 and the date of the Court’s preliminary approval of this class action settlement, under federal or California law, ordinance, and/or regulation, whether or not such claims are in the nature of back pay, damages,

interest, penalties, attorneys' fees or injunctive relief, whether in contract, in equity, or pursuant to a statutory remedy.

The listing of certain provisions of the Labor Code and Wage Orders here are for example only, and do not limit in any way the nature of this release, which is intended by the Parties to encompass all wage and hour claims (including any interest, attorney's fees, or penalties associated therewith) that were asserted on behalf of the Settlement Class Members in the Action, which were alleged in Class Counsel's November 19, 2009 communications with the LWDA in association with the Action, and similar claims that could have been asserted under the FLSA. The Released Claims are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice against the Released Persons by virtue of the proceedings herein and this Final Judgment and Order of Dismissal.

7. No person shall have any claim against Plaintiffs, Class Counsel, Res-Care, Inc., RSCR California, Inc., Defendants' Counsel, or the Released Parties or their agents based upon administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

8. Without affecting the finality of this judgment, the Court retains jurisdiction over this action, including the administration and consummation of the settlement. In addition, without affecting the finality of this judgment, the Court retains jurisdiction over Defendants, and each member of the Settlement Class as defined in this Order is hereby deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to this Order or the Settlement Agreement.

9. The Court finds that there is no reason for delay, and directs the Clerk to enter judgment, in the form attached hereto as Exhibit A.

**SO ORDERED**, this \_\_\_\_ day of \_\_\_\_\_, 2014.

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Hon. Judith S. Craddick





**EXHIBIT D**

**[PROPOSED JUDGMENT]**

STEPHEN SOMMERS, SBN 225742  
SAMANTHA R. PUNGPRAKEARTI, SBN 264919  
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RACHEL FOLBERG, SBN 209143  
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E-mail: mlocker@lockerfolberg.com

Attorneys for Plaintiffs GLORIA NELSON and JULIE TELLEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA  
UNLIMITED JURISDICTION**

GLORIA NELSON, AND JULIE TELLEZ  
individually, and, on behalf of all others similarly  
situated,

Plaintiffs,

v.

RES-CARE, INC. and RSCR CALIFORNIA, INC.,

Defendants.

) Case No. MSC09-03073

) CLASS ACTION

) **[PROPOSED] JUDGMENT**

On \_\_\_\_\_, the Court entered its Order granting final approval of class action settlement in this matter, as attached hereto as Exhibit "A". Therefore, IT IS ORDERED, ADJUDGED, AND DECREED that the Class Members have and recover from Defendants RSCR CALIFORNIA, INC. and/or RES-CARE, INC. as provided in the Settlement Agreement entered into between the Parties, which is incorporated herein by reference.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Named Plaintiffs and the Estate of Jerrica Chou receive enhancement awards in the aggregate of Fifty Thousand Dollars (\$50,000.00), to be paid out of the Maximum Settlement Amount. This aggregate amount shall be paid as follows: \$17,500 to Gloria Nelson, \$17,500 to Julia Tellez, and \$15,000 to the Estate of Jerrica Chou.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Class Counsel receive an award of attorneys' fees and costs in the amount of Two Million, Three Hundred Thousand Dollars (\$2,300,000.00).

IT IS SO ORDERED, ADJUDGED, AND DECREED.

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

\_\_\_\_\_  
Hon. Judith S. Craddick  
Judge of the Superior Court

**EXHIBIT E**

**[PROPOSED PRELIMINARY APPROVAL ORDER]**

SOMMERS EMPLOYMENT GROUP, P.C.  
Stephen A. Sommers, SBN 225742  
Samantha R. Pungprakearti, SBN 264919  
Ashley A. Baltazar, SBN 284921  
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Attorneys for Plaintiffs GLORIA NELSON and JULIE TELLEZ

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF CONTRA COSTA - UNLIMITED JURISDICTION**

GLORIA NELSON and JULIE  
TELLEZ, individually, and on behalf  
of all others similarly situated,

Plaintiffs,

v.

RES CARE, INC. and RSCR  
CALIFORNIA, INC.,

Defendants.

Case No. C09-03073

**CLASS ACTION**

**[PROPOSED] ORDER APPROVING JOINT  
APPLICATION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

On \_\_\_\_\_, the Court considered the joint motion of Plaintiffs GLORIA NELSON and JULIA TELLEZ (“Plaintiffs”) and Defendants RES-CARE, INC. and RSCR CALIFORNIA, INC. (“RSCR”) for preliminary approval of the parties’ proposed settlement, approval of the notice of settlement and claim/exclusion form to the class, appointment of Simpluris, Inc. as settlement administrator, and the setting of a date for hearing of the Final Approval of the settlement.

Stephen Sommers of Sommers Employment Law Group, P.C. appeared for Plaintiffs, and Ronald G. Polly, Jr. and Matthew A. Boyd of Hawkins Parnell Thackston & Young LLP appeared for RSCR.

The Court having read and considered the papers on the motion, heard the presentations of Class Counsel and Defendants’ counsel, having reviewed all of the submissions presented with respect to the proposed Settlement, having carefully considered the requirements for class certification, and having determined that the Settlement is fair, adequate, and reasonable, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Court finds that the Notice Plan set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of California law and federal due process law.

2. The Settlement, as set forth in the Settlement Agreement, is in all respects fair, reasonable, adequate and in the best interests of the Settlement Class, and it is preliminarily approved. The Parties shall effectuate the Settlement Agreement according to its terms. The Settlement Agreement, and every term and provision thereof, shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

3. Simpluris, Inc. is appointed as the Settlement Administrator.

4. Notice shall be disseminated according to the notice plan described in the Settlement Agreement and substantially in the form submitted by the parties. Proof of

distribution of the Notice and the Claim and Exclusion forms shall be filed by the parties at or prior to the Final Approval Hearing.

5. RSCR is directed to provide to the Settlement Administrator the current mailing addresses and other information for Class Members specified by the Settlement Agreement no later than thirty (30) days after the Court enters its order granting Preliminary Approval of the Settlement.

6. The Settlement Administrator is directed to mail the approved Notice of Settlement and Claim/Exclusion forms no later than ten (10) days following receipt of the Class Member information from RSCR. In the event of returned or non-deliverable notices, the Settlement Administrator will take reasonable steps, including but not limited to conducting a skip trace, to locate Class Members and re-send the notices.

7. Class Members must timely submit a valid Claim Form for settlement in order to receive a share of the settlement proceeds.

8. Any Class Member who objects to the settlement must mail their objection to the Court, Claims Administrator, Class Counsel, and Defendants' Counsel so that it is postmarked no later than 60 days following mailing of the Class Settlement Notice.

9. Any Class Member who wishes to either claim a settlement share or exclude his/her self from the Settlement must mail the Claim and Exclusion form to Simpluris, Inc. within 60 days of mailing of the Class Notice.

10. A Final Approval Hearing will be held on \_\_\_\_\_ at \_\_\_\_ a.m./p.m., \_\_\_\_, 110 days following the Court's entry of an order granting Preliminary Approval of the Settlement, or at the Court's earliest convenience after that date on \_\_\_\_\_ at \_\_\_\_\_ a.m./pm. , to determine whether the proposed settlement should be granted final approval. The Court will hear all evidence and argument necessary to evaluate the Settlement, and will consider Plaintiffs' request for Class Representative Payments and Class Counsel's request for Attorneys' Fees and Expenses.

11. Any Class Member who complies with the procedures and requirements specified in the Notice of Settlement may appear at the final approval hearing in person or with his or her attorney, and show cause why the Court should not approve the Settlement, or object to the motion for awards of the Class Representative's Payment and the Class Counsel's Attorneys' Fees and Expenses Payment.

12. The Court reserves the right to continue the date of the final approval hearing without further notice to Class Members. The Court shall retain jurisdiction necessary to effectuate this Order and to consider all further applications arising out of or in connection with the Settlement.

Dated: \_\_\_\_\_, 2014

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Hon. Judith S. Craddick  
Judge of the Superior Court