

LAW OFFICES OF THOMAS W. FALVEY

Thomas W. Falvey (State Bar No. 65744)
Michael H. Boyamian (State Bar No. 256107)
Armand R. Kizirian (State Bar No. 293992)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
T: (818) 547-5200
F: (818) 500-9307
E: thomaswfalvey@gmail.com,
mike.falveylaw@gmail.com,
armand.falveylaw@gmail.com

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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BY 
VIVIANA OLIVARES, DEPUTY

ALEXANDER KRAKOW + GLICK LLP

Michael S. Morrison (State Bar No. 205320)
401 Wilshire Boulevard, Suite 1000
Santa Monica, California 90401
T: 310 394 0888 | F: 310 394 0811
E: mmorrison@akgllp.com

JML LAW, A PROFESSIONAL LAW CORPORATION

Joseph M. Lovretovich (State Bar No. 73403)
David F. Tibor (State Bar No. 230563)
21052 Oxnard Street
Woodland Hills, California 913567
T: (818) 610-8800
F: (818) 610-3030
E: jml@jmlaw.com, david@jmlaw.com

Attorneys for Plaintiff VIVIAN PHILLIPS individually,
on behalf of all others similarly situated, and the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF SAN BERNARDINO**

VIVIAN PHILLIPS, as an individual, on
behalf of herself, all others similarly
situated, and the general public,

Plaintiff,

v.

ACCENTCARE, INC., a corporation,
ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC., a corporation,
ACCENTCARE HOME HEALTH, INC., a
corporation, and DOES 1-100,

Case No. CIVDS 1620673

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

1. **FAILURE TO PAY
COMPENSATION FOR ALL
HOURS WORKED AND MINIMUM
WAGE VIOLATIONS (CAL. LABOR
CODE §§ 216, 1194, 1194.2, 1197)**
2. **FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR
CODE §§ 510, 1194)**

- 1 -

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2 Defendants.

3 **3. FAILURE TO PAY MEAL AND**
4 **REST PERIOD COMPENSATION**
5 **(CAL. LABOR CODE §§ 226.7, 512)**

6 **4. FAILURE TO PROVIDE**
7 **ACCURATE ITEMIZED**
8 **STATEMENTS (CAL. LABOR**
9 **CODE § 226)**

10 **5. WAITING TIME PENALTIES (CAL.**
11 **LABOR CODE § 203)**

12 **6. FAILURE TO PAY ALL WAGES BY**
13 **THE APPROPRIATE PAY PERIOD**
14 **(CAL. LABOR CODE § 204)**

15 **7. UNFAIR BUSINESS PRACTICES**
16 **(CALIFORNIA BUSINESS &**
17 **PROFESSIONS CODE § 17200, ET**
18 **SEQ.)**

19 **8. PRIVATE ATTORNEYS GENERAL**
20 **ACT OF 2004 (CAL. LABOR CODE**
21 **§ 2698, ET SEQ.)**

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff VIVIAN PHILLIPS ("PLAINTIFF"), as an individual and on behalf of herself,
24 all others similarly situated, and the general public, complains and alleges on information and
25 belief the following against ACCENTCARE, INC., a corporation, ACCENTCARE HOME
26 HEALTH OF CALIFORNIA, INC., a corporation, and ACCENTCARE HOME HEALTH, INC.,
27 a corporation, and DOES 1-100 (collectively "DEFENDANTS"):

28 **INTRODUCTION**

1. This case arises out of DEFENDANTS' systematic, company-wide unlawful
treatment of PLAINTIFF and hundreds of similarly situated employees in violation of numerous
provisions of the California Labor Code and California's Unfair Compensation Law (Business
and Professions Code Section 17200 et seq. ["UCL"]).

1 2. DEFENDANTS operate one of the largest home healthcare providers in the
2 country. DEFENDANTS provide a wide range of post-acute healthcare services ranging from
3 personal, non-medical care to skilled nursing, rehabilitation, hospice care, and care management.
4 PLAINTIFF and all other similarly situated employees were/are employed by DEFENDANTS as
5 home health care nurses in California that provide various healthcare services at patients' homes
6 for DEFENDANTS in California.

7 3. PLAINTIFF alleges in this lawsuit that she and other home health care nurses were
8 not paid the minimum wage for all work for all hours worked, were not paid for all the overtime
9 pay to which they are entitled, were not provided with lawful meal and rest periods as required by
10 California state law, and were provided inaccurate wage statements , among other claims.
11 PLAINTIFF alleges that she and other similarly situated home health care nurses working in
12 California were not paid the minimum wage for all time work based on DEFENDANTS' use of
13 an unlawful piece-rate compensation plan that does not separately compensate home health care
14 nurses for non-piece rate work, including rest periods, and pre-and post-visit work that arises
15 outside of home visits, such as travelling to patients' homes, ordering supplies, and completing
16 paperwork.

17 4. In this case, DEFENDANTS know they have an unlawful piece rate program,
18 which is why they elected under Cal. Labor Code section 226.2 to pay 4% of gross wages.
19 DEFENDANTS do not credit home health nurses with any overtime pay when the total hours
20 worked through the assigned patient visits results in work over eight hours in a day or forty hours
21 in a week. Furthermore, travel time from the home office to the first patient of the day is not
22 compensated pursuant to policy. The travel time from employee's home to the first patient – even
23 when this time would exceed the time it would take to drive to the home office – is also not
24 compensated. In addition, for all the incidental work not subsumed by DEFENDANTS' unlawful
25 piece-rate scheme, DEFENDANTS compensate home health nurses for additional non-visit
26 activity at an hourly rate of pay. However, DEFENDANTS fostered a work culture where Class
27 Members were ridiculed, criticized, and discouraged by upper-level management from submitting
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1 requests for overtime pay. DEFENDANTS' expectation was that all work - patient visits and the
2 attendant work included - would amount to eight hours of work and compensation.

3 5. PLAINTIFF further alleges that none of the earning statements reveal a separate
4 payment for mandated rest breaks as proscribed by Labor Code Section 226.2.

5 6. This action further alleges that DEFENDANTS have violated California Business
6 and Professions Code Section 17200, et seq., based on their violations of California's Labor laws
7 pertaining to the payment of wages.

8 7. The violations described in this lawsuit entitle PLAINTIFF and the PLAINTIFF
9 CLASS to unpaid wages, including minimum wage, all applicable statutory and civil penalties,
10 attorneys' fees, costs, and interest as well as injunctive relief. PLAINTIFF seeks certification
11 under Rule 23 of the federal Rules of Civil Procedure as to the PLAINTIFF CLASS (defined
12 below).

13 **JURISDICTION AND VENUE**

14 8. Venue is proper in this Judicial District and the County of San Bernardino because
15 work was performed by Plaintiff and other members of the Class for Defendant in the County of
16 San Bernardino, California, and Defendant's obligations under the Employment Laws and
17 Regulations to pay overtime wages, to provide meal and rest periods and accurate wage
18 statements to Plaintiff and other members of the Class arose and were breached in the County of
19 San Bernardino.

20 9. The California Superior Court has jurisdiction in this matter because PLAINTIFF
21 is a resident of California, DEFENDANTS are qualified to do business in California and regularly
22 conducts business in California. Further, no federal question is at issue as the claims are based
23 solely on California law.

24 **PARTIES**

25 10. Plaintiff VIVIAN PHILLIPS is a resident of Los Angeles County, California.
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1 PLAINTIFF was formerly employed by DEFENDANTS as a home health care nurse ("Nurse")
2 working out of DEFENDANTS' Lancaster location in California from approximately January
3 2010 to April 2015.

4 11. PLAINTIFF is informed, believes, and alleges that DEFENDANTS have been
5 doing business in California at all relevant times. Defendant ACCENTCARE, INC. is a
6 Delaware corporation which has been doing business in California at all relevant times.
7 Defendant ACCENTCARE HOME HEALTH OF CALIFORNIA, INC. is a California
8 corporation which has been doing business in California at all relevant times. Defendant
9 ACCENTCARE HOME HEALTH, INC. is a Delaware corporation which has been doing
10 business in California at all relevant times.

11 12. Section 2(G) of Industrial Wage Commission ("IWC") Order Number 15-2004
12 defines an "employer" as any "person as defined in Section 18 of the [California] Labor Code,
13 who directly or indirectly, or through an agent or any other person, employs or exercises control
14 over the wages, hours, or working conditions of any person." PLAINTIFF is informed, believes,
15 and alleges that DEFENDANTS directly, indirectly, or acting through the agency of each other,
16 employ or exercise control over the wages, hours, or working conditions of PLAINTIFF and the
17 rest of the class. Furthermore, on information and belief, a centralized payroll and accounting
18 system is used to pay the wages of PLAINTIFF and all members of the class at all
19 DEFENDANTS' locations in California. Specifically, DEFENDANTS pay the wages and other
20 benefits of all PLAINTIFF CLASS members and direct and control, with the assistance of or
21 through the other named DEFENDANTS, the terms and conditions of all class members'
22 employment. Accordingly, DEFENDANTS are deemed joint employers of PLAINTIFF and the
23 rest of the PLAINTIFF CLASS.

24 13. DEFENDANTS are additionally deemed joint employers of PLAINTIFF and
25 members of the PLAINTIFF CLASS because ACCENTCARE, INC. and ACCENTCARE
26 HOME HEALTH OF CALIFORNIA, INC. are the entities listed as employers on PLAINTIFF's
27 and members' of the PLAINTIFF CLASS wage statements.

1 14. DEFENDANTS also constitute an integrated enterprise because there is an
2 interrelation of operations, common management, centralized control of labor relations, and
3 common financial control. Specifically, PLAINTIFF is informed and believes and thereon
4 alleges that: each of the DEFENDANTS have a right to control the job duties of PLAINTIFF and
5 the PLAINTIFF CLASS; each of the DEFENDANTS share a common human resources and use
6 the same payroll services; and each of the DEFENDANTS share and control the facilities where
7 PLAINTIFF and members of the PLAINTIFF CLASS worked.

8 15. The true names and capacities of Defendants named as DOES 1-100, inclusive,
9 whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF, who
10 therefore sues such Defendants by such fictitious names. PLAINTIFF will amend this Complaint
11 to show true names and capacities when they have been determined.

12 16. At all times mentioned, DEFENDANTS, and each of them, were the agents,
13 representatives, employees, successors, assigns, parents, subsidiaries, and / or affiliates, each of
14 the other and, at all pertinent times, were acting within the course and scope of their authority as
15 such agents, representatives, employees, successors, assigns, parents, subsidiaries, and / or
16 affiliates. PLAINTIFF also alleges that DEFENDANTS were, at all relevant times, the alter egos
17 of each other. All references made to DEFENDANTS herein are intended to include all of the
18 named Defendants as well as the DOE Defendants. Each of the fictitiously named DOE
19 Defendants is responsible in some manner for the occurrences alleged and proximately caused
20 PLAINTIFF's damages as well as damages of members of the class.

21 **EQUITABLE TOLLING**

22 17. PLAINTIFF promptly filed a charge for unpaid wages through the Department of
23 Labor Standards and Enforcement ("Labor Commissioner") on September 14, 2015, well within
24 the limitations period, following her separation from DEFENDANTS. Thereafter, she amends
25 her charge to assert outstanding additional wages for a larger period of time. On June 6, 2016,
26 she withdraws her Labor Commissioner Claim. Thereafter on October 10, 2016, the parties to the
27 instant matter enter into a tolling agreement.

1 18. PLAINTIFF maintains that the one-year statute of limitations for penalties under
2 the Private Attorneys General Act of 2004 and Labor Code Section 226(e) has not run. Equitable
3 tolling extends “[w]hen an injured person has several legal remedies and, reasonably and in good
4 faith, pursues one.” *McDonald v. Antelope Valley Community College District*, 45 Cal.4th 88,
5 100 (2008). The doctrine extends “even to the voluntary pursuit of alternate remedies.” *Id.* at
6 101. The doctrine of equitable tolling requires a showing of three elements: “timely notice, and
7 lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the
8 plaintiff.” *Id.* at 102 citing *Addison v. State of California*, 21 Cal.3d 313, 319 (1978).

9 19. DEFENDANTS in both the administrative action and in the instant action are the
10 same. Both claims were almost identical and involved Phillips’ claim unpaid wages and whether
11 DEFENDANTS compensated her for all hours worked. DEFENDANTS received prompt notice
12 of the wage claim and an opportunity to investigate it. Indeed, DEFENDANTS actively
13 participated in the Labor Commissioner action and appeared in multiple administrative hearings.
14 All of this activity shows DEFENDANTS was given ample opportunity to prepare its defense.

15 20. Thus, from the date she separated from the Company (March 12, 2015) to the date
16 she initiated her DLSE claim (September 14, 2015), six months and two days had expired.
17 Thereafter, from the date she dismissed her DLSE charge (June 6, 2016) to when the parties to
18 this matter entered into a tolling agreement (October 10, 2016) another four months and five days
19 had run. Therefore, relying on the doctrine of equitable tolling, a one-year window of time has
20 not run for PLAINTIFF to pursue her penalty claims against DEFENDANTS.

21 **CLASS ACTION ALLEGATIONS**

22 21. PLAINTIFF brings this action on behalf of herself and all others similarly situated
23 as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3), on behalf of the
24 following class (referred to as the “PLAINTIFF CLASS”). The PLAINTIFF CLASS is
25 composed of and defined as follows:
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1 **All persons who worked as home health care nurses at any of**
2 **DEFENDANTS' locations in California at any time within four (4) years prior to the filing**
3 **of this Complaint until the final judgment (hereinafter "the Class Period").**

4 22. **Numerosity and Ascertainability:** The members of the PLAINTIFF CLASS are
5 so numerous that joinder of all members would be unfeasible and impracticable. The
6 membership of the entire class is greater than 50 individuals, but the identity of such membership
7 is readily ascertainable via inspection of the personnel records and other documents maintained
8 by DEFENDANTS.

9 23. **Common Questions of Law and Fact:** There are common questions of law and
10 fact as to members of the class which predominate over questions affecting only individual
11 members, including, without limitation:

12 A. Whether DEFENDANTS denied PLAINTIFF and the PLAINTIFF CLASS
13 all of the wages to which they are entitled pursuant to the California Labor Code, the California
14 Industrial Welfare Commission's ("IWC") Wage Orders, and all other applicable Employment
15 Laws and Regulations.

16 B. Whether DEFENDANTS failed to make meal and rest periods available to
17 PLAINTIFF and members of the PLAINTIFF CLASS as required by law and / or paid
18 compensation in lieu thereof;

19 C. Whether DEFENDANTS failed to pay the required state minimum wage to
20 PLAINTIFF and members of the PLAINTIFF CLASS for every hour where work was performed;

21 D. Whether DEFENDANTS failed to pay the required premium overtime rate
22 of pay to PLAINTIFF and members of the PLAINTIFF CLASS for work performed in excess of
23 eight hours a day or forty hours a week;

24 E. Whether DEFENDANTS violated California Labor Code Section 204 by
25 failing to pay all wages earned in a timely manner;

26 F. Whether DEFENDANTS failed to provide PLAINTIFF and members of
27 the PLAINTIFF CLASS with accurate itemized statements;
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1 G. Whether DEFENDANTS owe PLAINTIFF and members of the
2 PLAINTIFF CLASS waiting time penalties pursuant to California Labor Code Section 203;

3 H. Whether DEFENDANTS engaged in unfair business practices under
4 Section 17200, et. seq. of the California Business and Professions Code;

5 I. The effect upon and the extent of damages suffered by members of the
6 PLAINTIFF CLASS and the appropriate amount of compensation.

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8 24. **Typicality and Adequacy of Representation:** The claims PLAINTIFF pleads as
9 class action claims are typical of the claims of all members of the PLAINTIFF CLASS as they
10 arise out of the same course of conduct and are predicated on the same violation(s) of the law.
11 PLAINTIFF, as a representative party, will fairly and adequately protect the interests of the class
12 by vigorously pursuing this suit through his attorneys who are skilled and experienced in handling
13 matters of this type.

14 25. The nature of this action and the nature of the laws available to the PLAINTIFF
15 CLASS make use of the class action format, a particularly efficient and appropriate procedure to
16 afford relief to members of the PLAINTIFF CLASS. Further, this case involves a corporate
17 employer and a large number of individual employees possessing claims with common issues of
18 law and fact. If each employee were required to file an individual lawsuit, the corporate
19 Defendants would necessarily gain an unconscionable advantage since they would be able to
20 exploit and overwhelm the limited resources of each individual Plaintiff with their vastly superior
21 financial and legal resources. Requiring each class member to pursue an individual remedy
22 would also discourage the assertion of lawful claims by employees who would be disinclined to
23 pursue an action against their present and/or former employer for an appreciable and justifiable
24 fear of retaliation and permanent damage to their careers at present and/or subsequent
25 employment. Proof of a common business practice or factual pattern, of which the named
26 PLAINTIFF experienced, is representative of the PLAINTIFF CLASS and will establish the right
27 of each of the members of the PLAINTIFF CLASS to recovery on these alleged claims.
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1 26. The prosecution of separate actions by the individual members of the PLAINTIFF
2 CLASS, even if possible, would create: (a) a substantial risk of inconvenient or varying verdicts
3 or adjudications with respect to the individual members of the PLAINTIFF CLASS against the
4 DEFENDANTS; and/or (b) legal determinations with respect to the individual members of the
5 PLAINTIFF CLASS which would, as a practical matter, be dispositive of the other class
6 members' claims who are not parties to the adjudications and / or would substantially impair or
7 impede the ability of class members to protect their interests. Further, the claims of the individual
8 members of the PLAINTIFF CLASS are not sufficiently large to warrant vigorous individual
9 prosecution considering all of the associated concomitant costs and expenses. PLAINTIFF is
10 unaware of any difficulties that are likely to be encountered in the management of this action that
11 would preclude its maintenance as a class action.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 27. Plaintiff VIVIAN PHILLIPS was hired by DEFENDANTS in January 2010 as a
14 home health care nurse working out of DEFENDANTS' Lancaster location. PLAINTIFF's main
15 job duties were to provide nursing services to patients in their homes, which included evaluating
16 patients who were discharged from the hospital, administering intravenous medication, and
17 providing wound care.

18 28. Members of the PLAINTIFF CLASS are current and former employees of
19 DEFENDANTS who were employed as per diem registered nurses, licensed practical nurses,
20 physical therapists, occupational therapists, speech language pathologists, home health aides, and
21 medical social workers at DEFENDANTS' California locations. Members of the PLAINTIFF
22 CLASS perform the same basic job duties as PLAINTIFF.

23 29. DEFENDANTS force home health care nurses, including PLAINTIFF and the
24 PLAINTIFF CLASS, to complete certain work without being compensated. In California, by
25 law, any time which is not compensated automatically constitutes a minimum wage violation.
26 *See Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. DEFENDANTS fail to pay home
27 health care nurses the required minimum wage for all hours worked. In particular,
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1 DEFENDANTS compensate PLAINTIFF and members of the PLAINTIFF CLASS through use
2 of a piece-rate pay system which is based on each home health visit they make and the type of
3 service they perform, as opposed to an hourly wage method. For example, home health care
4 nurses receive one flat fee for new admissions, another flat amount for IV's, etc. The piece-rate
5 system only compensates for the time worked during the home health visits. Nurses are not
6 compensated for most other work that arises outside the actual home visits, or non-piece-rate
7 work. Home health care nurses are not paid for other time during which they are under the
8 employer's control and are performing tasks that benefit the employer, including time spent
9 traveling to patients' homes, ordering supplies, filling out paperwork, charting, documenting
10 conferences, rest periods, and delays.

11 30. DEFENDANTS also fail to pay PLAINTIFF and members of the PLAINTIFF
12 CLASS all the overtime pay to which they are entitled. DEFENDANTS' piece-rate compensation
13 plan presumes that all work is completed in shifts of eight (8) hours or less and that no overtime
14 will be worked for the week. This is because DEFENDANTS allot insufficient time to complete
15 each of the various home health visits that Nurses make. Nurses must regularly work far in excess
16 of eight (8) hours a day or forty (40) hours a week to complete their home health visits. Even
17 though Nurses submit time cards indicating they worked overtime, DEFENDANTS pay them
18 only as if they worked forty (40) hours in a week and less than eight (8) hours each day. Further,
19 DEFENDANTS do not pay Nurses for the non-piece-rate hours they work. To the extent these
20 unpaid hours constitute overtime hours, the overtime premium must be paid for this time.

21 31. Throughout PLAINTIFF's and PLAINTIFF CLASS members' employment with
22 DEFENDANTS, DEFENDANTS routinely failed to provide PLAINTIFF and members of the
23 PLAINTIFF CLASS with meal or rest periods or compensation in lieu thereof as required by
24 California law. Specifically, DEFENDANTS fail to provide a meal period where home health
25 care nurses are relieved of their duty for a thirty (30) minute period within the first five (5) hours
26 of their shift or pay the premium compensation for the missed meal period. In addition, home
27 health care nurses never receive a second meal period for shifts in excess of ten (10) hours and
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1 also do not receive the premium compensation for the missed second meal period. There is no
2 evidence that PLAINTIFF or PLAINTIFF CLASS members agreed to waive their right to a
3 second meal period with respect to shifts lasting more than ten (10) hours but less than twelve
4 (12) hours. Defendants do not have a policy authorizing meal periods. In addition, they dissuade
5 and discourage meal periods by overloading the schedules of home health nurses and not paying
6 for work beyond 8 hours in a day. Furthermore, PLAINTIFF and members of the PLAINTIFF
7 CLASS do not indicate on their hand-written time sheets called Records of Daily Activity that
8 they took or were provided with statutory-mandated meal periods.

9 32. Moreover, DEFENDANTS fail to provide rest periods or compensate PLAINTIFF
10 and members of the PLAINTIFF CLASS for missed rest periods despite their knowledge that
11 such periods are not made available to them. Specifically, pursuant to established policies and
12 procedures applicable to PLAINTIFF and all members of the PLAINTIFF CLASS,
13 DEFENDANTS fail to provide home health nurses with a ten (10) minute, work-free rest period
14 for shifts lasting between two (2) and six (6) hours. They are also not provided a second rest
15 period for shifts lasting six (6) to ten (10) hours or a third rest period for shifts in excess of ten
16 (10) hours. DEFENDANTS did not pay PLAINTIFF or members of the PLAINTIFF CLASS the
17 premium compensation for these missed rest periods. The law is clear that employees paid on a
18 piece-rate system must be separately compensated for rest periods. *See Bluford v. Safeway Stores,*
19 *Inc.* (2013) 216 Cal.App.4th 864, 872; *Cardenas v. McLane Food Services, Inc.* (C.D. Cal. 2011)
20 796 F.Supp.2d 1246, 1252 .

21 33. DEFENDANTS also provided inaccurate wage statements to PLAINTIFF and
22 members of the PLAINTIFF CLASS. The wage statements also do not show the correct gross
23 pay earned and the correct net wages earned, among other deficiencies. This causes injury
24 because it makes it more difficult for PLAINTIFF and members of the PLAINTIFF CLASS to
25 determine what compensation they are owed but were not paid. Moreover, DEFENDANTS
26 failed to comply with California Labor Code Section 226.2 mandating that wage statements
27 reveal rest periods being taken and paid. California enacted Assembly Bill 1513 to address
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1 claims for recovery of wages, damages, and penalties with respect to piece-rate employees. AB
2 1513 added California Labor Code Section 226.2 of which subdivision (a) establishes certain
3 wage statement requirements as well as a methodology for calculating wages for these
4 employees. DEFENDANTS were well aware of this new statute but nevertheless failed to follow
5 the letter of the law by not disclosing the pertinent information required by Section 226.2.

6 34. PLAINTIFF and members of the PLAINTIFF CLASS were also not provided with
7 all wages due upon termination or resignation. This is prohibited practice in California.

8 35. Overall, DEFENDANTS' violations of the law were willful and done according to
9 DEFENDANTS' established policies and procedures, as applicable to PLAINTIFF and all
10 members of the PLAINTIFF CLASS.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY COMPENSATION FOR ALL HOURS WORKED AND MINIMUM**
13 **WAGE VIOLATIONS**

14 (Cal. Lab. Code §§ 216, 1194, 1194.2, 1197)

15 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
16 situated members of the PLAINTIFF CLASS against DEFENDANTS.

17 36. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
18 allegations contained in paragraphs 1 to 35.

19 37. PLAINTIFF brings this action to recover unpaid compensation for all hours
20 worked, defined by the IWC as the time during which an employee is subject to the control of an
21 employer, including all the time the employee suffers or is permitted to work, whether or not
22 required to do so.

23 38. DEFENDANTS' conduct described in this Complaint violates California Labor
24 Code Sections 216, 1194, 1194.2, and 1197, among other things.

25 39. DEFENDANTS failed to pay PLAINTIFF and members of the PLAINTIFF
26 CLASS for all of the actual hours worked even though PLAINTIFF and members of the
27 PLAINTIFF CLASS were providing services to DEFENDANTS and were under
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1 DEFENDANTS' control. DEFENDANTS knew or should have known that PLAINTIFF and
2 members of the PLAINTIFF CLASS were working these hours for which they were not paid.

3 40. PLAINTIFF and members of the PLAINTIFF CLASS are entitled to recover the
4 unpaid balance of compensation DEFENDANTS owe PLAINTIFF and members of the
5 PLAINTIFF CLASS, plus interest on that amount, liquidated damages pursuant to California
6 Labor Code Section 1194.2, reasonable attorney fees, and costs of this suit pursuant to California
7 Labor Code Section 1194.

8 41. PLAINTIFF and members of the PLAINTIFF CLASS are also entitled to
9 additional penalties and / or liquidated damages pursuant to statute.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME COMPENSATION**

12 (Cal. Lab. Code §§ 510 and 1194)

13 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
14 situated members of the PLAINTIFF CLASS against DEFENDANTS.

15 42. As a separate and distinct cause of action, PLAINTIFF complains and realleges all
16 the allegations contained in this complaint, and incorporates them by reference into this cause of
17 action as though fully set forth herein, excepting those allegations which are inconsistent with this
18 cause of action.

19 43. During the Class Period, DEFENDANTS have routinely required members of the
20 PLAINTIFF CLASS, including PLAINTIFF, to work over eight hours in a day and over forty
21 hours in a workweek. However, DEFENDANTS have failed and refused to pay the Members of
22 the PLAINTIFF CLASS, including PLAINTIFF, the overtime compensation required by the
23 Employment Laws and Regulations.

24 44. The PLAINTIFF CLASS, including PLAINTIFF, have been deprived of their
25 rightfully earned overtime compensation as a direct and proximate result of Defendant's policies
26 and practices and Defendant's failure and refusal to pay that compensation. The PLAINTIFF
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1 CLASS, including PLAINTIFF, are entitled to recover such amounts, plus interest, attorney's
2 fees, and costs.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION**

5 (Cal. Lab. Code §§ 226.7, 512)

6 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
7 situated members of the PLAINTIFF CLASS against DEFENDANTS.

8 45. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
9 allegations contained in paragraphs 1 to 44.

10 45. Throughout PLAINTIFF's employment with DEFENDANTS, DEFENDANTS
11 failed to make available to PLAINTIFF and members of the PLAINTIFF CLASS uninterrupted,
12 work-free thirty (30) minute meal periods in accordance with the requirements of California law.
13 DEFENDANTS failed to provide a meal period or timely meal period for shifts in excess of five
14 (5) hours worked, failed to provide a second meal period for shifts in excess of ten (10) hours,
15 and failed to compensate employees for these missed or late meal periods, as required by law.

16 46. Throughout PLAINTIFF's employment with DEFENDANTS, DEFENDANTS
17 failed to make available to PLAINTIFF and members of the PLAINTIFF CLASS any rest period
18 for shifts lasting four (4) hours or a major fraction thereof, as required by law, and failed to
19 compensate them for missed rest periods.

20 47. PLAINTIFF is informed, believes, and, thereon, alleges, that the failure of
21 DEFENDANTS to make available meal and rest periods and to compensate PLAINTIFF and
22 members of the PLAINTIFF CLASS for these missed meal and rest periods was willful,
23 purposeful, and unlawful and done in accordance with the policies and practices of
24 DEFENDANTS' operations.

25 48. As a proximate cause of these violations, PLAINTIFF and members of the
26 PLAINTIFF CLASS have been damaged in an amount according to proof at the time of trial, but
27 in an amount in excess of the jurisdiction of this Court. PLAINTIFF and members of the
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1 PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed, penalties,
2 including penalties available pursuant to California Labor Code Sections 226, 226.7, and 558,
3 interest, reasonable attorney fees, and costs of suit pursuant to California Labor Code Sections
4 218.5 and 1194, et seq.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

7 (Cal. Lab. Code § 226)

8 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
9 situated members of the PLAINTIFF CLASS against DEFENDANTS.

10 49. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
11 allegations contained in paragraphs 1 to 48.

12 50. DEFENDANTS failed to provide PLAINTIFF and members of the PLAINTIFF
13 CLASS with accurate itemized statements as required by California Labor Code Section 226.

14 51. PLAINTIFF is informed, believes, and alleges that the failure of DEFENDANTS
15 to provide accurate itemized wage statements was knowing and intentional. PLAINTIFF and
16 members of the PLAINTIFF CLASS have suffered injury as a result of DEFENDANTS' actions
17 in this regard in that they must expend additional time and incur expenses that otherwise would
18 not have been expended or incurred in order to determine the amount of wages they are owed but
19 were never paid. As a result, PLAINTIFF and members of the PLAINTIFF CLASS are entitled
20 to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
21 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
22 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and
23 are entitled to an award of costs and reasonable attorney fees.

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1 **FIFTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 (Cal. Lab. Code § 203)

4 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
5 situated members of the PLAINTIFF CLASS against DEFENDANTS.

6 52. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
7 allegations contained in paragraphs 1 to 51.

8 53. Pursuant to California Labor Code Section 201, if an employer discharges an
9 employee, the wages earned and unpaid at the time of the discharge are due and payable
10 immediately. Pursuant to California Labor Code Section 202, if an employee quits his or her
11 employment, the wages earned and unpaid at the time of the discharge are due and payable within
12 seventy-two (72) hours of resignation.

13 54. PLAINTIFF and members of the PLAINTIFF CLASS were either terminated by
14 DEFENDANTS or have resigned from their employment with DEFENDANTS. To this day,
15 PLAINTIFF and members of the PLAINTIFF CLASS have not received all of the wages and
16 other compensation they rightfully earned.

17 55. DEFENDANTS, and each of them, willfully refused and continue to refuse to pay
18 PLAINTIFF and members of the PLAINTIFF CLASS all wages earned, including overtime
19 compensation, in a timely manner, as required by California Labor Code Section 203.
20 PLAINTIFF therefore requests restitution and penalties pursuant to California Labor Code
21 Section 203.

22 **SIXTH CAUSE OF ACTION**

23 **FAILURE TO PAY ALL WAGES BY THE APPROPRIATE PAY PERIOD**

24 (Cal. Lab. Code § 204)

25 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
26 situated members of the PLAINTIFF CLASS against DEFENDANTS.

1 56. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
2 allegations contained in paragraphs 1 to 55.

3 57. During the Class Period, Labor Code Section 204 applied to DEFENDANTS'
4 employment of PLAINTIFF and members of the PLAINTIFF CLASS. At all relevant times,
5 California Labor Code Section 204 provided that all wages earned by any employee, such as
6 PLAINTIFF and members of the PLAINTIFF CLASS, in any employment between the first (1st)
7 and fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon
8 termination of an employee, are due and payable between the sixteenth (16th) and twenty-sixth
9 (26th) day of the month during which the work was performed. Furthermore, at all relevant times,
10 California Labor Code Section 204 provided that all wages earned by any employee, such as
11 PLAINTIFF and any member of the PLAINTIFF CLASS, in any employment between the
12 sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due
13 upon termination of an employee, are due and payable between the first (1st) and tenth (10th) day
14 of the following month.

15 58. During the Class Period, DEFENDANTS failed to pay PLAINTIFF and members
16 of the PLAINTIFF CLASS wages for all hours worked.

17 59. During the Class Period, DEFENDANTS failed to pay PLAINTIFF and members
18 of the PLAINTIFF CLASS for all wages earned, and, therefore, violating California Labor Code
19 Section 204. Accordingly, PLAINTIFF and members of the PLAINTIFF CLASS are entitled to
20 recover all damages, penalties, and other remedies available for violation of California Labor
21 Code Section 204.

22 **SEVENTH CAUSE OF ACTION**

23 UNFAIR BUSINESS PRACTICES

24 (Cal. Bus. & Prof. Code § 17200, et seq.)

25 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
26 situated members of the PLAINTIFF CLASS against DEFENDANTS.
27
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1 60. PLAINTIFF realleges and incorporates, by reference, as though fully set forth, the
2 allegations contained in paragraphs 1 to 59.

3 61. DEFENDANTS' violations of the employment laws and regulations, as alleged in
4 this Complaint, include, among other things, DEFENDANTS': (1) failure and refusal to provide
5 legally compliant meal and rest periods or compensation in lieu thereof; (2) failure and refusal to
6 pay the minimum wage for all hours worked; (3) failure and refusal to pay all wages, including
7 overtime wages, earned by PLAINTIFF and members of the PLAINTIFF CLASS pursuant to
8 DEFENDANTS' illegal wage practices. The aforementioned violations constitute unfair business
9 practices in violation of the Unfair Competition Law, codified in California Business and
10 Professions Code Section 17200, et seq.

11 62. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have
12 reaped unfair benefits and illegal profits at the expense of PLAINTIFF, members of the
13 PLAINTIFF CLASS, and members of the general public. DEFENDANTS should be compelled
14 to restore such monies to PLAINTIFF and members of the PLAINTIFF CLASS.

15 **EIGHTH CAUSE OF ACTION**

16 PRIVATE ATTORNEYS GENERAL ACT

17 (Cal. Labor Code § 2698, et seq.)

18 By PLAINTIFF in her individual capacity and in her capacity as representative of all similarly
19 situated members of the PLAINTIFF CLASS against DEFENDANTS.

20 63. As a separate and distinct cause of action, PLAINTIFF complains and realleges all
21 of the allegations contained in this complaint, and incorporate them by reference into this cause of
22 action as though fully set forth herein, excepting those allegations which are inconsistent with this
23 cause of action.

24 64. PLAINTIFF is an aggrieved employee as defined in Labor Code § 2699 (a).
25 PLAINTIFF brings this cause of action on behalf of herself and other current or former home
26 health nurses affected by the labor law violations alleged in this complaint.

1 65. DEFENDANTS, at all times relevant to this complaint, were employers or persons
2 acting on behalf of an employer who violated PLAINTIFF'S rights by violating the Employment
3 Laws and Regulations and are subject to civil penalties.

4 66. DEFENDANTS committed the following violations of the Labor Code against
5 PLAINTIFF, and, on information and belief, against other current or former employees while
6 they were employed by Defendants:

7 (a) DEFENDANTS violated Labor Code §§ 201-203 by failing to pay
8 all wages due on the date of the employee's involuntary termination or within 72 hours of the
9 employee's voluntary termination.

10 (b) DEFENDANTS violated Labor Code § 204 by failing to pay all
11 wages due at least twice during each calendar month, in compliance with those provisions.

12 (c) DEFENDANTS violated Labor Code § 216 by, having the ability
13 to pay, willfully refusing to pay wages due and payable after demand has been made.

14 (d) DEFENDANTS violated Labor Code § 226 by failing to provide
15 accurate itemized wage statements.

16 (e) DEFENDANTS violated Labor Code § 510, 1194 and provisions of
17 the applicable IWC Wage Order by failing to compensate the members of the PLAINTIFF
18 CLASS, including PLAINTIFF, at one and one-half times the regular rate of pay for any work in
19 excess of eight hours in a day and 40 hours in a week.

20 (f) DEFENDANTS violated Labor Code §§ 226.7 and 512 by failing
21 to provide meal and rest periods compliant with California law.

22 (g) DEFENDANTS violated Labor Code § 1174 by failing to maintain
23 payroll records showing the daily hours worked.

24 (h) DEFENDANTS violated Labor Code §§ 1194 and 1197 and
25 provisions of the applicable IWC Wage Order by failing to pay the legal minimum wage.

26 (i) DEFENDANTS violated Labor Code § 1199 by requiring or
27 causing members of the PLAINTIFF CLASS, including PLAINTIFF, to work for longer hours
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1 than those fixed, or under conditions of labor prohibited by the applicable IWC Wage Order, by
2 paying the members of the PLAINTIFF CLASS, including PLAINTIFF, a wage less than the
3 minimum fixed by the applicable Wage Order, or by violating or refusing or neglecting to comply
4 with the provisions of Labor Code Division 2, Part 4, Chapter 1 or the applicable IWC Wage
5 Order.

6 67. Pursuant to PAGA, PLAINTIFF should be awarded twenty-five percent (25%) of
7 all penalties due under California law, including attorneys' fees and costs.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, PLAINTIFF prays for relief as follows:

- 10 1. That the court determine Causes of Action 1-7 may be maintained as a class
11 action;
- 12 2. For injunctive relief to stop DEFENDANTS' illegal practices described above,
13 including, but not limited to, the payment of wages, including overtime wages,
14 inaccurate itemized statements, etc.;
- 15 3. For general and compensatory damages, according to proof;
- 16 4. For restitution of all monies due to PLAINTIFF and PLAINTIFF CLASS from the
17 unlawful business practices;
- 18 5. For waiting time penalties pursuant to California Labor Code § 203;
- 19 6. For penalties pursuant to California Labor Code §§ 226, 558 and all other
20 applicable Labor Code and/or Employment Laws and Regulations;
- 21 7. For interest accrued to date;
- 22 8. For costs of the suit incurred;
- 23 9. For attorney fees and costs pursuant to California Labor code Sections 218.5, 226,
24 1021.5, 1194 and all other applicable law; and

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10. For such other and further relief that the Court may deem just and proper.

Dated: November 23, 2016

LAW OFFICES OF THOMAS W. FALVEY
ALEXANDER KRAKOW + GLICK, LLP
JML LAW, APLC

By: 

Michael H. Boyamian
Attorney for Plaintiff
VIVIAN PHILLIPS, individually and on behalf of
all others similarly situated

DEMAND FOR JURY TRIAL

PLAINTIFF and members of the PLAINTIFF CLASS further request a trial by jury on all
issues so triable.

Dated: November 23, 2016

LAW OFFICES OF THOMAS W. FALVEY
ALEXANDER KRAKOW + GLICK, LLP
JML LAW, APLC

By: 

Michael H. Boyamian
Attorney for Plaintiff
VIVIAN PHILLIPS, individually and on behalf of
all others similarly situated

FAXED

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 15 2017

BY Brenda Tirado
BRENDA TIRADO, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

VIVIAN PHILLIPS, individually, and on
behalf of other persons similarly situated

Plaintiffs,

v.

ACCENTCARE, INC.; ACCENTCARE
HOME HEALTH, INC.; and
ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC.; and DOES 1 through
10, Inclusive,

Defendants.

CASE NO.: CIVDS 1620673

Honorable David Cohn
Department S26

**~~PROPOSED~~ ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR CLASS NOTICE**

Date: March 1, 2017

Time: 8:30 am

Dept.: S26

WHEREAS, an action is pending before the Court entitled Vivian Phillips v.
AccentCare, Inc., et al., Case No. CIVDS 1620673;

WHEREAS, the parties having made application for an order approving the settlement
of this action, in accordance with a Settlement Agreement and Release of Claims (collectively,
the "Settlement Agreement" or "Agreement," attached hereto as Exhibit A), which, together with
the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the
Litigation (as defined in Paragraph II, L of the Agreement) and for entry of judgment in

1 accordance with the terms and conditions set forth in the Settlement Agreement; and the Court
2 having read and considered the Settlement Agreement and the exhibits annexed thereto; and

3 **WHEREAS**, all defined terms contained herein shall have the same meanings as are set
4 forth in the Settlement Agreement;

5 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

6 1. The Court does hereby preliminarily approve the Settlement Agreement and the
7 settlement set forth therein as being fair, adequate and reasonable.

8 2. Solely for purposes of the proposed settlement, a Settlement Class is hereby
9 provisionally certified pursuant to California Code of Civil Procedure §382 consisting of all
10 current and former nurses and other licensed health care professionals employed in positions in
11 California by AccentCare, Inc.; AccentCare Home Health, Inc.; and AccentCare Home Health of
12 California, Inc. who have, in any payroll period between July 1, 2012 and the date of this Order,
13 traveled to patients as part of their job duties and/or been paid on a per visit basis and who have
14 not previously released their claims. In connection with this provisional certification, the Court
15 conditionally finds, solely for purposes of approving the settlement and for no other purpose and
16 with no other effect on the Litigation, that the proposed Settlement Class meets the requirements
17 for certification under §382 of the California Code of Civil Procedure, including that (a) the
18 proposed class is ascertainable and so numerous that joinder of all members of the class is
19 impracticable, (b) there are, for purposes of the settlement, predominant questions of law or fact
20 common to the proposed class and a sufficient community of interest among the members of the
21 proposed class with respect to the subject matter of the Litigation, (c) the claims of the Named
22 Plaintiff Vivian Phillips are typical of the claims of the members of the proposed class, (d)
23 Named Plaintiff Vivian Phillips has fairly and adequately protected the interests of the members
24 of the proposed class with respect to the proposed settlement, (e) a class action is superior to
25 other available methods for efficient adjudication of and settlement of the claims asserted in this
26 controversy, and (f) Class Counsel are qualified to act as counsel for the Named Plaintiff and for
27 all other members of the proposed class.

28 3. Solely for purposes of the proposed settlement, the Court does hereby

1 preliminarily approve Alexander Krakow & Glick LLP and Michael Morrison, Esq., the Law
2 Offices of Thomas W. Falvey and Thomas W. Falvey, Esq., Michael H. Boyamian, Esq. and
3 Armand R. Kizirian, Esq. and JML Law and Joseph M. Lovretovich, Esq. and David F. Tibor,
4 Esq., as Class Counsel, and Named Plaintiff Vivian Phillips as the representative of the class,
5 and does hereby appoint, Phoenix Class Action Administration Solutions, as the parties' chosen
6 Settlement Administrator.

7 4. A hearing, for purposes of the Parties' presentation to the Court of their proposed
8 Final Approval Order (hereafter, "Final Approval Hearing"), shall be held before this Court on
9 July 6, 2017, at 8:30 AM m., in Department 826 1 of the Superior Court of
10 the State of California, in and for the County of San Bernardino, 247 West Third Street, San
11 Bernardino, CA 92415-0210, to determine whether the proposed settlement of the Litigation on
12 the terms and conditions provided for in the Settlement Agreement is fair, adequate and
13 reasonable and should be approved by the Court; whether the Final Approval Order and
14 Judgment as provided in Paragraph II, H, of the Settlement Agreement should be entered herein;
15 and to determine the amount of attorneys' fees and costs that should be awarded to Class
16 Counsel, and the amount of enhancement payment that should be awarded to the Named
17 Plaintiff.

18 5. The Court approves, as to form and content, the Notice of Pendency of Class
19 Action, Preliminary Approval of Settlement and Hearing for Final Approval (the "Class Notice")
20 annexed to the Settlement Agreement and to this Preliminary Approval Order as Exhibit B, and
21 finds that the distribution of the Class Notice substantially in the manner set forth in Paragraph 6
22 of this Order meets the requirements of California law and due process, and is the best notice
23 practicable under the circumstances and shall constitute due and sufficient notice to all Persons
24 entitled thereto.

25 6. The Settlement Administrator shall supervise and administer the notice procedure
26 as more fully set forth below:

27 (a) Within 10 business days following the Court's entry of this Preliminary Approval
28 Order, Defendant will provide the Settlement Administrator with a confidential list containing

1 the name and last known address, telephone number (if known), social security number, and
2 number of patient visits made during the Class Period for each member of the Settlement Class;

3 (b) Within 10 business days following receipt by the Settlement Administrator of the
4 confidential list referred to in the preceding subparagraph, the Settlement Administrator shall
5 distribute, by first class mailing to all Settlement Class members, a copy of the Class Notice;

6 (c) At least 10 days prior to the date on which the Court schedules the Final Approval
7 Hearing, the Settlement Administrator shall serve on Defendant's counsel and Class Counsel,
8 and Class Counsel shall file with the Court, proof, by affidavit or declaration, of such
9 distribution; and

10 (d) The Settlement Administrator shall take reasonable steps to locate Settlement
11 Class members as more fully set forth in Paragraphs IV and V of the Settlement Agreement.

12 7. All Settlement Class members shall be bound by all determinations and
13 judgments in the Litigation concerning the settlement, whether favorable or unfavorable to any
14 of them individually or to the Settlement Class.

15 8. Any member of the Settlement Class may enter an appearance in the Litigation, at
16 his or her own expense, individually or through counsel of his or her own choice. Any member
17 of the Settlement Class who does not enter an appearance or exclude him or herself from the
18 Class (i.e., opt-out), will be represented by Class Counsel.

19 9. Pending final determination of whether the settlement should be approved, the
20 Named Plaintiff shall not, either directly, representatively or in any other capacity, commence or
21 prosecute against Defendants or any of the Released Persons, any action or proceeding in any
22 court or tribunal asserting any of the Released Claims.

23 10. Any Settlement Class member who wishes to be excluded (opt-out) from the
24 Settlement Class and not participate in the proposed settlement must submit a written request on
25 or before June 1, 2017, for exclusion which includes:

26 (a) The Settlement Class member's name;

27 (b) The Settlement Class member's address, telephone number and the last four digits
28 of his/her Social Security Number; and

1 (c) A statement stating "I wish to exclude myself from the settlement reached in the
2 matter of Phillips v. AccentCare. I understand by excluding myself, I will not receive my
3 settlement share."

4 (d) Sign the written request for exclusion;

5 (e) Return the request for exclusion to the Settlement Administrator by first-class
6 mail to the address provided in the Class Notice; and

7 (f) A postmark no later than 45 days after the date of mailing of the Class Notice by
8 the Settlement Administrator, or, in the event a second mailing was required under Paragraph II,
9 C of the Settlement Agreement, no later than 60 days after the date of the first mailing.

10 11. Any member of the Settlement Class may object to the proposed settlement in
11 writing. Any member of the Settlement Class may also appear at the Final Approval Hearing,
12 either in person or through an attorney at the Settlement Class member's own expense, provided
13 such person notifies the Court of his or her intent to do so, and if he or she intends to appear
14 through an attorney, the name and address of the attorney. All written objections, supporting
15 papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify
16 the case name and number (Vivian Phillips v. AccentCare, Inc., et al., Case No. CIVDS
17 1620673), (b) be submitted to the Court either by mailing the objection and supporting papers, if
18 any, for filing to the Clerk of the Superior Court of the State of California in and for the County
19 of San Bernardino, 247 West Third Street, San Bernardino, CA 92415-0210, or by filing them in
20 person at any location of the Superior Court, County of San Bernardino that includes a facility
21 for civil filings, (c) also be mailed by first class mail to the Settlement Administrator at
22 PO BOX 7208, Orange, CA 92863, and (d) be filed or postmarked on or before
23 June 1st 2017, 2017. All objections shall be considered and ruled upon by the
24 Court at the Final Approval Hearing.

25 12. All papers in support of the settlement shall be filed and served no later than
26 June 1st 2017, 2017.

27 13. At the Final Approval Hearing, the Court shall determine whether the proposed
28 settlement, and any application for attorneys' fees or reimbursement of costs, shall be approved.

1 14. The Court reserves the right to adjourn the date of the Final Approval Hearing
2 without further notice to the Settlement Class members, and retains jurisdiction to consider all
3 further applications arising out of or connected with the proposed settlement.

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5 DATED: 3/15, 2017



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8 HONORABLE DAVID COHN

EXHIBIT "A"

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Settlement Agreement" or "Agreement"), is entered into as of January __, 2017, by and between AccentCare, Inc. AccentCare Home Health, Inc. and AccentCare Home Health of California, Inc. (hereinafter "AccentCare" or "Defendants") and Plaintiff Vivian Phillips, on behalf of herself individually and a purported class of persons described below (hereinafter collectively "Plaintiffs"). This Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims, as defined below, and subject to the terms and conditions herein. Defendants and Plaintiffs are jointly referred to as the "Parties."

I. RECITALS.

A. WHEREAS, on November 28, 2016, Plaintiff Phillips, filed a purported class action in the California Superior Court for the County of San Bernardino, entitled *Vivian Phillips, individually and on behalf of other persons similarly situated v. AccentCare, Inc.; AccentCare Home Health, Inc.; and AccentCare Home Health of California, Inc.; and Does 1 through 10, Inclusive*; Case No. CIVDS1620673, in which she sued Defendants on behalf of herself as representative Plaintiff and on behalf of a purported class of nurses and other licensed health care professionals employed in positions at AccentCare who have in any payroll period during the Class Period traveled to patients as part of their job duties and/or been paid on a per visit basis, and alleged among other things, that AccentCare had failed to pay wages for all time worked, failed to pay the minimum wage for all hours worked, failed to pay all overtime wages earned, failed to provide meal and rest periods in accordance with California law, including failing to pay premium compensation for missed, interrupted, short or late meal periods and for rest periods not provided, failed to pay for rest periods separate from the per visit rate, and to pay those rest periods at the rate required by law, failed to provide accurate wage statements complying with California law, failed to pay all earned wages upon separation of employment, and also alleged unfair business practices in violation of California Business & Professions Code §17200, and sought restitution pursuant to Business and Professions Code § 17203. The Complaint by Plaintiff also alleged violations of the California Labor Code, including its §§ 203, 210, 225.5, 226, 226(a), 226.2, 558, 1194, 1197, and California Code Regulations tit. 8, § 11050, subd. 12, and sought compensatory damages, liquidated damages, restitution, statutory penalties, civil penalties, including but not limited to under the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA"), interest, costs of suit and attorneys' fees. On August 31, 2016, Phillips had sent AccentCare a letter setting forth the aforementioned claims, including all PAGA claims thus tolling the limitations period on PAGA claims ("Catalyst Letter"). On November 23, 2016 Phillips sent a letter to the California Labor and Workforce Development Agency and AccentCare ("LWDA Letter") also setting forth the aforementioned claims.

B. WHEREAS, AccentCare, has and does deny each of these claims, and denies the claims made in the LWDA Letter. AccentCare also asserts that there were valid arbitration agreements entered by all members of the Settlement Class as defined in paragraph 2, P, including an arbitration agreement with a specific express class action waiver entered by members of such Settlement Class employed on June 21, 2016 and thereafter, and that, in any event, the claims were not suitable for class treatment and should not be certified;

C. WHEREAS, none of Plaintiff's wage-related or other claims have yet been certified for class treatment under California Code of Civil Procedure § 382; and

D. WHEREAS, on November 17, 2016, the Parties engaged in mediation before David A. Lowe, Esq. of Rudy, Exelrod, Zieff & Lowe, and reached an agreement on settlement on a class basis, which agreement is intended to fully and finally resolve all claims and disputes as between Plaintiff and all putative class members, on one hand, and AccentCare, on the other, with regard to the case and catalyst letter referred to above.

NOW, THEREFORE, the Parties agree as follows:

II. DEFINITIONS.

A. "Settlement Administrator" refers to Phoenix Class Action Administration Solutions.

B. "Class Counsel" refers to Michael Morrison, Esq. of Alexander, Krakow & Glick, 401 Wilshire Boulevard, Suite 1000, Santa Monica, California 90401; Thomas W. Falvey, Esq., Michael H. Boyamian, Esq. and Armand T. Kizirian, Esq., Law Offices of Thomas W. Falvey, 550 N. Brand Boulevard, Suite 1500, Glendale, California 91208-1900; and Joseph M. Lovretovich, Esq., and David F. Tibor, Esq., JML Law, 21052 Oxnard Street, Woodland Hills, California 91367.

C. "Class Period" refers to the period from July 1, 2012 to the date of preliminary approval of this class settlement.

D. "Class Notice" refers to written notice of settlement to members of the Settlement Class substantially in the form attached hereto as Exhibit A, as it may hereafter be modified by agreement of the Parties prior to approval by the Court which shall be mailed to the class members in English only.

E. "Closing Date" refers to _____, which shall be the date of the Court's order granting preliminary approval of the settlement.

F. "Court" refers to the court having jurisdiction over the Litigation, at any stage of the Litigation, presently the Superior Court of the State of California for the County of San Bernardino.

G. "Exclusion Period" refers to the interval beginning with the date Class Notice is first mailed to Settlement Class Members and ending 45 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 to the Settlement Administrator as undeliverable, the Exclusion Period for those class members only, who shall be sent a second mailing, will be extended for 15 days (60 days from first mailing) irrespective of when the first mailing was returned to the Settlement Administrator as undeliverable.

H. "Final Approval Order and Judgment" refers to the Order and Judgment entered by the Court following the final approval hearing granting final approval of this settlement and

entering judgment substantially in the form attached hereto as Exhibit B, or as it may hereafter be modified by agreement of the Parties prior to Court approval or as directed by the Court.

I. "Final Settlement Class" refers to all members of the Settlement Class who do not timely and validly exclude themselves from the class in compliance with the exclusion procedures set forth in this Agreement. Such individuals are sometimes referred to herein as "Final Settlement Class Members."

J. "Final" and "Effective Date."

1. "Effective Date" means the date by which all of the following have occurred: (i) the trial Court has granted the Settlement its final approval, as evidenced by the entry of the Court's Final Approval Order and Judgment pursuant to paragraph II, H; and (ii) the trial Court's Order and Judgment has become "Final" within the meaning of the next paragraph.

2. "Final" for purposes of the preceding paragraph means the latest of: (i) if there is a timely objection or intervention and an appeal is taken from the trial Court's Order and Judgment, the date of final affirmance or dismissal of the appeal, and the expiration of the time for any additional review of the appeal to be filed, or, if such review is granted, the date of final affirmance of the Order and Judgment following review pursuant to that grant; or (ii) if there is a timely objection or intervention, the last day on which an appeal of the Order and Judgment could be taken by such objector or intervenor with no appeal having been filed; or (iii) if there is no timely objection or intervention and hence no appeal can be filed, the date on which the trial Court enters its Order and Judgment.

K. "Final Effective Date" refers to the date all of the requirements of paragraph II, J, 1 and 2 above are met.

L. "Litigation" refers to the purported class action identified in paragraph I, A, above which is currently pending in the Superior Court of the State of California for the County of San Bernardino, the Catalyst Letter referred to in the same paragraph, and the LWDA Letter.

M. "Named Plaintiff" refers to Vivian Phillips.

N. "Parties" refers to the Named Plaintiff and AccentCare; "Party" refers to either of them.

O. "Preliminary Approval Order" refers to the Court's Order Preliminarily Approving Settlement and Providing for Class Notice substantially in the form attached hereto as Exhibit C or as it may hereafter be modified by agreement of the Parties or directed by the Court.

P. "Settlement Class" refers to all current and former nurses and other licensed health care professionals employed at AccentCare in California who have, in any payroll period during the Class Period, traveled to patients as part of their job duties and/or been paid on a per visit basis. Members of the Settlement Class are sometimes referred to herein as "Settlement Class Members." AccentCare estimates the Settlement Class to consist of approximately 1346 Settlement Class Members.

Q. "Settlement Share" refers to the payment to which a qualifying Final Settlement Class Member becomes entitled pursuant to this Settlement, as more fully set forth in paragraph IX below.

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

Promptly upon the execution of this Agreement, Plaintiff shall apply to the Court for approval of the Settlement, including a Preliminary Approval Order substantially in the form attached hereto as Exhibit C preliminarily approving the Settlement Agreement under the legal standards relating to the preliminary approval of class action settlements; certifying the Settlement Class for settlement purposes only; approving the Class Notice substantially in the form attached hereto as Exhibit A; and setting a final approval hearing and briefing schedule.

IV. SETTLEMENT ADMINISTRATION.

A. Engagement of Settlement Administrator: Promptly upon entry of the Preliminary Approval Order (if not sooner), the parties shall engage the Settlement Administrator. As more fully set forth in paragraph IX, Defendant shall pay, out of the Total Maximum Settlement Amount described in that paragraph, the Settlement Administrator's reasonable fees, not to exceed a maximum of fifteen thousand dollars (\$15,000).

B. Duties of Settlement Administrator: The Settlement Administrator shall be solely responsible for: (i) preparing, printing and disseminating to Settlement Class Members the Class Notice; (ii) 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 Settlement Administrator receives; (iii) determining the Settlement Share to be paid to each Final Settlement Class Member in accordance with this Agreement; (iv) keeping track of requests for exclusion including maintaining the original mailing envelope in which the request was mailed; (v) preparing and mailing checks or other forms of payment of Class Counsel's fees and costs, the Named Plaintiff's enhancement award, and the Settlement Shares in accordance with this Agreement and Order of the Court; (vi) initially running an NCOA search to verify address information for each Settlement Class Member and then running a "skip trace" search to ascertain current address and addressee information for each Class Notice returned as undeliverable and re-mailing the Class Notice where appropriate; (vii) performing all tax reporting duties required by federal, state or local law; (viii) referring to Class Counsel all inquiries by Settlement Class Members regarding matters not within the Settlement Administrator's duties specified herein; (ix) apprising counsel for the Parties of the activities of the Settlement Administrator; (x) maintaining adequate records of its activities, including the dates of each mailing of Class Notices, returned mail and other communications and attempted written or electronic communications with Settlement Class Members; (xi) confirming in writing its completion of the administration of the settlement; (xii) preparing a final report summarizing its activities for filing with the Court in connection with the Parties' application for final approval of the settlement; and (xiii) such other tasks as the Parties mutually agree.

C. Dispute Resolution: The Settlement Administrator will have the initial responsibility for resolving all disputes that may arise during the settlement administration

process, including, without limitation, disputes, if any, regarding whether individuals who contact the Settlement Administrator desiring to participate in the settlement are or are not members of and eligible to participate in the class to which this Agreement applies, and any inquiries and disputes regarding the computation of the Settlement Share to be paid to each Final Settlement Class Member based on the number of patient visits he or she made during the Class Period as provided in paragraph IX, A, 5, of this Agreement. With respect to the latter, if information provided by any Settlement Class Member regarding the number of patient visits he or she made in the position differs from the information submitted by AccentCare based on its employment records, AccentCare 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., pay stubs, employment records, termination notice, final pay information, etc.) proves otherwise. In the event the Settlement Administrator cannot resolve a dispute based on a review of the available information, the Settlement Administrator will request a conference call with Class Counsel and Defendants' counsel to discuss and resolve the dispute, which resolution shall be final and binding on the Settlement Class Member. In advance of the conference call, the Settlement Administrator will fax or e-mail PDF copies of all available information to all counsel.

V. CLASS NOTICE.

A. Initial Identification of Settlement Class Members: No later than 10 business days following entry of the Preliminary Approval Order, AccentCare will provide the Settlement Administrator a confidential list containing the name and last known address, telephone number, social security number, and the number of patient visits made during the Class Period for each Settlement Class Member, as confirmed by a signed declaration. The Settlement Administrator shall fully comply with AccentCare requirements regarding the confidentiality of the information provided by AccentCare including without limitation the need to protect the confidentiality of the social security numbers of the Settlement Class Members. Class counsel intends to make a request to the Court at the Final Approval Hearing that the aforementioned list be provided to it by AccentCare. AccentCare intends to object to that request.

B. Mailing of Class Notice and Claim Form: No later than 10 business days following receipt of the list of Settlement Class Members from AccentCare, the Settlement Administrator shall mail the Class Notice to all listed Settlement Class Members via first-class mail using the last-known address information provided by AccentCare. With respect to each Class Notice which is returned to the Settlement Administrator as undeliverable before the end of the Exclusion Period, the Settlement Administrator shall promptly attempt to determine a correct address using a reasonable search method and shall re-send the Class Notice via first-class mail to any new address thereby determined.

VI. BINDING EFFECT: EXCLUSION AND OBJECTION RIGHTS.

A. Right of Settlement Class Members to be Excluded: Any Settlement Class Member other than the Named Plaintiff may elect to be excluded from the Settlement Class but must do so no later than 45 days from the mailing of the Class Notice or at any time during the Exclusion Period. To be effective, any such election must be made in writing and state "I wish to exclude myself from the settlement reached in the matter of Phillips v. AccentCare. I

understand by excluding myself, I will not receive my settlement share.”, must contain the name, address, telephone number and the last four digits of the social security number of the individual requesting exclusion; must be signed by the individual who is electing to be excluded; and must be mailed to the Settlement Administrator and postmarked on or before the end of the Exclusion Period. 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 Agreement; (ii) shall not be entitled to receive a Settlement Share; and (iii) shall not be bound by this Agreement, the Final Approval Order, or the Final Judgment.

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 members of the Final Settlement Class for all purposes under this Agreement; will be bound by the terms and conditions of this Agreement, the Final Approval Order, the Final 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 may object to this settlement, provided that such objection is made in a writing filed with the Court and mailed by first-class mail to the Settlement Administrator postmarked no later than 45 days from class notice mailing or the end of the Exclusion Period applicable to the class member under paragraph II, G, above. The Settlement Administrator shall promptly forward any such objections to all counsel. Such objection shall include the name and address of the objector; shall clearly explain the specific basis for the objection; shall attach where appropriate all documentation that the objector contends supports the objection; and, if the objector is represented by counsel, shall provide the name and address of such counsel. Subject to the discretion of the Court, no Final Settlement Class Member may be heard at the final approval hearing held pursuant to paragraph VII of this Agreement who has not complied with the requirements of this paragraph.

D. No Solicitation Of Exclusions Or Objections: Neither of the Parties, their counsel, nor any consultant or any other person acting on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the Settlement Class, or object to the settlement or appeal from any order of the Court that is consistent with the terms of this settlement, or discourage participation in the settlement.

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

VII. FINAL SETTLEMENT APPROVAL.

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

VIII. SETTLEMENT TERMINATION.

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

1. If the Court declines to enter the Preliminary Approval Order, the Final Approval Order or the Final Judgment.

2. While recovery of attorneys' fees and costs by Class Counsel and an award of an enhancement payment to the Named Plaintiff are terms of this Agreement, they are not conditions to the effectiveness of this Agreement or the settlement. The allowance or disallowance by the Court of an award of attorneys' fees and/or costs and/or the enhancement award to the Named Plaintiff 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 class. Any order or proceeding relating to the application by Class Counsel for an award of attorney fees and costs or the enhancement award to the Named Plaintiff, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Final Judgment as set forth herein. In the event of such appeal, payments in the amounts determined under paragraph IX, A, 5 will be made to Final Settlement Class Members in accordance with paragraph IX, C, 1, but the amounts referred to in paragraphs IX, A, 1 and 3 will be retained by AccentCare pending the outcome of the appeal. If, following appeal, the fees, costs and/or enhancement awards have been reduced from the amounts set forth in paragraphs IX, A, 1 and 3, resulting in additional funds available for distribution, the parties will meet and confer to consider, in light of the amount of those funds, how they should be distributed.

3. AccentCare may, at its discretion, terminate the Agreement if 10% or more of the Settlement Class Members exclude themselves from the settlement. To terminate the Agreement on this ground AccentCare shall give written notice to Class Counsel within 10 business days of the later of the end of the Exclusion Period or the date the last exclusion request is received by counsel for Defendants. The time between this notice deadline and the final approval hearing will be no less than 30 days. If AccentCare terminates the Agreement pursuant to this paragraph, it shall be solely responsible for the costs of claims administration incurred up to the point of the termination of the Agreement.

B. Effect of Termination: Termination shall have the following effects:

1. The Settlement Agreement shall be terminated and shall have no force or effect, and neither Party shall be bound by any of its terms, except for those in paragraphs VIII, B, XI and XII;

2. In the event the settlement is terminated, AccentCare shall have no obligation to make any payments to Named Plaintiff, any Settlement Class Member or Class Counsel (including attorney's fees or costs);

3. The Preliminary Approval Order, and the Final Approval Order and Final Judgment, if any, including any order of class certification for settlement purposes, shall be vacated;

4. The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of the Parties, each of whom shall be restored to their respective positions in the Litigation prior to the settlement, including the uncertified nature of any putative class; and

5. Neither this Settlement Agreement, nor any ancillary documents, actions, statements or filings in furtherance the Settlement shall be admissible or offered into evidence in the Litigation or any other action for any purpose whatsoever.

IX. SETTLEMENT PAYMENTS.

A. AccentCare's Settlement Payment Obligations: The Parties agree that the total maximum amount AccentCare shall be required to pay under and as a consequence of this settlement, including payments to Final Settlement Class Members, payment of Class Counsel's attorneys' fees and litigation costs, the enhancement payment to be made to the Named Plaintiff, and the payment of settlement administration costs, shall not exceed a total of One Million Five Hundred Thousand Dollars (\$1,500,000) (hereafter the "Total Maximum Settlement Amount"); provided, however, if the number of class members initially identified pursuant to paragraph V, A, exceeds 1480, money will be added to the Total Maximum Settlement Amount pro-rata based on additional patient visits made by the class members exceeding 1480. Defendants will also separately pay their portion of any employer payroll taxes which are owed. This is a non-reversionary settlement. In full and complete settlement of the class action and subject to this settlement being approved by the Court and Final Judgment being entered and there being no termination by AccentCare pursuant to paragraph VII, A, 3, AccentCare agrees to make the following payments from the Total Maximum Settlement Amount:

1. Payment of reasonable attorneys' fees and litigation expenses. Class Counsel intend to request that the Court award them reasonable attorneys' fees up to a total of Five Hundred Thousand Dollars (\$500,000) and litigation costs up to a total of Fifty Thousand Dollars (\$50,000), for total fees and costs up to but not exceeding a maximum of Five Hundred Fifty Thousand Dollars (\$550,000) subject to the approval of the Court. AccentCare agrees not to oppose such request for fees and costs up to a maximum of Five Hundred Fifty Thousand Dollars (\$550,000), and to file with the Court a statement of such non-opposition.

2. Payment of reasonable expenses of the Settlement Administrator. AccentCare agrees that payment will be made for the reasonable expenses of the Settlement Administrator in administering the settlement.

3. Payment of a reasonable enhancement award to the Named Plaintiff. Class Counsel intends to request that the Court award the Named Plaintiff \$20,000 for having previously asserted her separate claims and for providing a separate General Release of all her claims and as an enhancement payment, subject to the approval of the Court. AccentCare agrees to file with the Court a statement of non-opposition to such request up to a maximum of \$20,000. Whether the Court awards the amount requested or a different amount, Named Plaintiff shall also be entitled to participate in the settlement and receive a settlement payment along with other Class Members as provided in the next section. In exchange for payment of the enhancement award approved by the Court, the Named Plaintiff shall be required to execute a general release

of all claims and a waiver of benefits under California Civil Code § 1542 in the form of Exhibit D hereto.

4. Payment to the California Labor and Workforce Development Agency ("LWDA"), of \$11,250, which represents 75 percent of the amount of \$15,000 allocable to penalties under the Private Attorneys General Act of 2004 ("PAGA").

5. Payments to Final Settlement Class Members: Each eligible member of the Final Settlement Class shall receive a pro rata share of a settlement payment based on his or her length of active service measured by the number of patient visits which he or she made while a member of the Settlement Class as defined in paragraph II, P, and during the Class Period as defined in paragraph II, C. The amount of the payment to be made to all Final Settlement Class members shall be determined by deducting from the Total Maximum Settlement Amount set forth in paragraph IX, A the amounts set forth in paragraphs IX, A, 1-4, and multiplying the result by a fraction the numerator of which is the number of patient visits made by the Final Settlement Class Member while engaged in active service during the Class Period as described above, and the denominator of which is the aggregate number of patient visits made by all Final Settlement Class Members while engaged in such employment during the Class Period; provided, however, total payment to class members, if any, who released their claims in the case of *Elizabeth Mendoza v. AccentCare, Inc.*, et al., Case No.: 30-2013-00661891-CU-OE-CXC and did not work for Defendants after October 21, 2014, shall not exceed eight percent (8%) of the net settlement fund.

While AccentCare disputes that any purported class member has a viable claim to any payment or that the Litigation is appropriate for class treatment, the Parties, having engaged in good faith, arms-length negotiations, with the assistance of a respected mediator, hereby agree, for purposes of this settlement, that the payment formula set forth above on which the amount of the Settlement Shares to be paid to Final Settlement Class Members is based, is, in the Parties considered opinions, reasonable and represents a fair settlement to members of the Class based on all of the facts and circumstances and the Parties' own independent investigations and evaluations of the claims, with due consideration being given to, among other things, the risk that the court or an arbitrator may not find the Plaintiff's claim is amenable to class treatment under either or both of the applicable arbitration agreements, that the case might not be certified as a class action and/or that it might not succeed on the merits given the proof adduced by Defendants during informal discovery prior to the mediation of its full compliance with all California wage-related and other employment laws.

6. No Effect on Employee Benefits: Amounts paid to Plaintiff or other Settlement Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

B. Allocations of Settlement Payments and Taxes. All payments made to the Named Plaintiff and to Final Settlement Class Members under this settlement shall be allocated one-third to wages, one-third to interest and one-third to penalties. The allocation to penalties shall be inclusive of the \$3,750 payment to the Final Settlement Class Members of the \$15,000 amount

allocable to PAGA penalties. All deductions and employee-side payroll taxes required by law shall be taken from the amount allocated to wages.

C. Timing of Settlement Payments. Payment of Settlement Shares shall be made within 20 business days of the date the Settlement Administrator receives the Total Maximum Settlement Amount from AccentCare in accordance with the following paragraphs:

1. On or after the Final Effective Date, and no later than 5 days after the Settlement Administrator (a) has been advised by the parties of the total amount of attorneys' fees and costs and enhancement award approved by the Court, (b) has determined the total costs of settlement administration, and (c) has performed the necessary computations to determine the amount of each eligible Final Settlement Class Member's Settlement Share, the Settlement Administrator shall provide to counsel for the parties a written statement showing how each of those payments, up to a maximum of the Total Maximum Settlement Amount, is to be distributed. AccentCare shall forward a check or wire-transfer for the sum of One Million Five Hundred Thousand Dollars (\$1,500,000), or such greater amount if the class members exceed 1480 as provided in paragraph IX, A, to the Settlement Administrator within 14 days of receipt of such written statement. Promptly on receipt of the payment from AccentCare, the Settlement Administrator shall issue to each qualifying Final Settlement Class Member via first-class mail a check in the amount of his or her Settlement Share, less applicable taxes. Checks not negotiated within 180 days from their issuance are void and the amount shall be escheated to the State of California pursuant to California Code of Civil Procedure § 1513.

2. Class Counsel shall advise the Settlement Administrator as to whether the enhancement award shall be paid to the Named Plaintiff by check sent directly to the Named Plaintiff or provided instead to Class Counsel. The enhancement payment shall not be made unless and until the Named Plaintiff has provided defendant's counsel with the signed general release of all claims attached hereto as Exhibit D and as provided in paragraph IX, A, 3.

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

A. Release: Effective as of the Final Effective Date, each member of the Final Settlement Class and their respective heirs, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and assigns (collectively, the "Releasing Persons") hereby forever completely release and discharge AccentCare and their past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, payroll agencies, affiliated organizations, insurers, reinsurers, and assigns, and each of their past, present and future officers, directors, trustees, shareholders, agents, employees, attorneys, accountants, contractors, representatives, partners, joint venturers, investors, investment bankers, indemnitees and benefit plans sponsored or administered by AccentCare, divisions, units, branches and other persons or entities acting on their behalf (collectively, the "Released Persons"), from any and all claims, demands, rights, liabilities, expenses, and losses of any kind, whether known or unknown, that any of the Releasing Persons has or may have against any of the Released Persons at any time prior to the date of preliminary approval of the settlement, which were made or could have been made based on the facts asserted in the August 31, 2016 catalyst letter sent by Michael Morrison, Esq. to Defendants and its Chief Executive Officer, and/or in the LWDA Letter, and/or in the

San Bernardino Superior Court Complaint, including but not limited to claims for violations of state wage and hour laws, minimum wage claims, work "off the clock" claims, overtime claims, meal period claims, rest period claims, including but not limited to claims that Class Members paid on a per visit (piece-rate) basis should have been paid separate from the per visit rate for rest periods and at such rates provided by statute and/or case law, claims that premiums should be paid to Class Members for interrupted, short or late meal periods or for rest periods not provided, claims for failure to provide complete and accurate wage statements, waiting time and timely payment of wages claims, unfair business practices claims, PAGA claims, liquidated damages claims, claims under California Business and Professions Code §17200 and §17203, California Labor Code §§ 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 225.5, 226, 226(a), 226.2, 226.7, 510, 512, 558, 1021.5, 1174, 1194, 1194.2, 1197, 1199, Cal. Code Regs., tit. 8 § 11050, subd. 12, and compensatory claims for damages, liquidated damages, restitution, statutory penalties, civil penalties, including under the Private Attorneys General Act, Labor Code § 2699, *et seq.*, and claims for interest, costs of suit, attorneys' fees and/or other liabilities related to any of the foregoing; and any claim arising out of or relating to the negotiations leading to this settlement.

B. Waiver of California Civil Code § 1542: The Releasing Persons acknowledge that they each may have claims that are actually alleged in the Complaint, the August 31, 2016 Catalyst Letter and the LWDA Letter as described in detail in Paragraph X that are presently unknown and that the release contained in this Agreement is intended to and will fully, finally, and forever discharge all such claims, whether now asserted or unasserted, known or unknown, to the extent they fall within the description of claims being released above.

ACCORDINGLY, WITH RESPECT TO THE CLAIMS RELEASED ABOVE, EACH RELEASING PERSON EXPRESSLY UNDERSTANDS AND AGREES TO WAIVE THE PROVISIONS OF, AND RELINQUISH ALL RIGHTS AND BENEFITS AFFORDED BY, CALIFORNIA CIVIL CODE § 1542, WHICH 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.

C. In giving this waiver, the Releasing Persons 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 subject matter released herein, but agree that they have taken that possibility into account in reaching this Agreement and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Persons expressly assume the risk, they freely and voluntarily give the release as set forth above.

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

E. Assignment: Named Plaintiff represents and warrants that she has not assigned, transferred, or hypothecated any claim that she has released under this agreement or under the separate general release she will be providing AccentCare in accordance with paragraph IX, A, 3.

XI. SURVIVAL OF EXISTING PROTECTIVE ORDERS.

Anything herein to the contrary notwithstanding, any protective order previously entered between the Parties in the Litigation shall survive the entry of Final Judgment pursuant to this settlement and shall remain in full force and effect.

XII. 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 AccentCare, 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 a class in the Litigation or any other action for adversarial, other than settlement purposes, and AccentCare expressly reserves its position that, other than for purposes of this settlement, the Litigation is not suitable for and should not be certified as a class action.

XIII. COMMUNICATIONS REGARDING SETTLEMENT AND REPRESENTATIONS OF PHILLIPS AND HER COUNSEL.

A. No Publicity. Except as may be required by law, Class Counsel, the Named Plaintiff and AccentCare, and any consultant or other person acting on their behalf, shall not do any of the following:

1. Take any steps beyond the Class Notice as ordered by the Court, to publicize the Litigation, the claims made in the Litigation, or the existence or any term of this settlement;
2. Contact any representative of the media (including, but not limited to, the press, TV, radio, or Internet) or make any press release or public statement concerning the Litigation, the claims made in the Litigation, or the existence or any term of this settlement, and if contacted by any representative of the media or press, will state only that the matter has been satisfactorily resolved on mutually agreeable terms; and
3. Post any information or links to information concerning the Litigation, the claims made in the Litigation, or any term of this settlement on any website or on any other form of advertisement or public information; however, nothing shall preclude Plaintiff and her counsel

from posting the Settlement Agreement on one of Plaintiff's counsel's webpages, but such posting shall be marked prominently, "For AccentCare Employees Only."

Nothing herein shall be construed to prevent Named Plaintiff, Class Counsel or AccentCare from communicating appropriately with Settlement Class members or their representatives; or to prevent the Parties or their representatives from communicating with accountants or legal advisors regarding the settlement. In addition, nothing herein shall prohibit Class Counsel from stating the name of the case, the case number, the general nature of the case, and the settlement amount in declarations filed in other class action matters pending in state or federal courts where doing so is necessary to make out an "adequacy of counsel" showing in those pending cases.

B. Representations of Phillips. In addition, as a material inducement for AccentCare to enter into this Agreement, Phillips represents and warrants that she is not currently aware of any other employee or former employee of AccentCare who is considering bringing or intends to bring a claim or claims similar to those asserted in the Litigation, whether on behalf of the same purported class or any other group of AccentCare employees.

XIV. INTERIM STAY OF PROCEEDINGS.

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

XV. NOTICES.

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

A. If to Named Plaintiff or Class Counsel, then to:

Michael Morrison, Esq.
Alexander Krakow & Glick LLP
401 Wilshire Boulevard, Suite 1000
Santa Monica, CA 90401
Telephone: (310) 394-0888
E-mail: mmorrison@akgllp.com

Thomas W. Falvey, Esq.
Michael H. Boyamian, Esq.
Armand R. Kizirian, Esq.
Law Offices of Thomas W. Falvey
550 N. Brand Boulevard, Suite 1500
Glendale, CA 91203-1900
Telephone: (818) 547-5202 – Direct
E-mail: mike.falvey@law@gmail.com

Joseph M. Lovretovich, Esq.
David F. Tibor, Esq.
JML Law
21052 Oxnard Street
Woodland Hills, CA 91367
Telephone: (818) 835-5735
E-mail: jml@jmlaw.com

B. If to AccentCare or counsel for AccentCare, then to:

Robert J. Kane, Esq.
Stuart Kane LLP
620 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Telephone: (949) 791-5127
E-mail: rkane@stuartkane.com

XVI. RETENTION OF JURISDICTION BY THE COURT.

Following entry of Final Judgment pursuant to this settlement, the Court shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to settlement administration or the enforcement of the terms of the settlement or any protective orders previously entered in the Litigation.

XVII. 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 have been entered into.

XVIII. MODIFICATION OR AMENDMENT.

This Settlement Agreement may not be modified, amended or altered except in a writing signed by both Parties, or their authorized legal representatives.

XIX. 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.

XX. 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. Plaintiffs and AccentCare acknowledge and agree that they each 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. Each party waives the provisions of Civil Code § 1654, 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."

XXI. 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.

XXII. AUTHORITY.

The individuals signing this Settlement Agreement on behalf of AccentCare represent and warrant that they are duly authorized to do so. Class Counsel likewise represent and warrant that they are duly authorized by their client to execute this Settlement Agreement and to take all appropriate action required and permitted to be taken by this Settlement Agreement.

XXIII. TAXES; INDEMNIFICATION.

The Parties agree that one-third of the settlement payments made to each Final Settlement Class member constitutes wages subject to employment taxes and other applicable withholdings required by law, one-third allocated to interest and the other one-third allocated to penalties from which no employment taxes or other withholdings shall be taken. Named Plaintiff and the members of the Final Settlement Class who receive monetary consideration under this Settlement Agreement shall be solely responsible for all federal and state local income taxes, and the employee's payroll taxes arising in connection therewith. The Parties acknowledge that neither AccentCare nor its counsel, Class Representative nor Class Counsel, have provided any tax-related advice in connection with this settlement, and agree that neither AccentCare nor its counsel nor Class Representative nor Class Counsel shall have any liability of any nature whatsoever for any tax implications or claims related to the payment of the settlement funds as provided in this agreement.

AccentCare shall be responsible for payment of the employer's portion only of payroll taxes on the wage portion of the settlement payment.

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

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

XXIV. REASONABLE COOPERATION.

Class Counsel, the Named Plaintiff, AccentCare and its counsel shall provide reasonable cooperation with one another and the Settlement Administrator in implementing this settlement, including but not limited to providing information and executing documents necessary to effectuate its purpose.

XXV. MISCELLANEOUS.

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

B. Signatures. Facsimile of PDF transmissions of the signatures of the Parties or their representatives shall be binding on the Parties.

[Signatures On Following Page]

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the parties as of the date first written above.

VIVIAN PHILLIPS

DATED: _____

Vivian Phillips

ACCENTCARE, INC.

DATED: 1/20/17

By: Timothy F. Ryan

ACCENTCARE HOME HEALTH, INC.

DATED: 1/20/17

By: Timothy F. Ryan

ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC.


DATED: 1/20/17

By: Timothy F. Ryan

APPROVED AS TO FORM AND CONTENT

ALEXANDER KRAKOW & GLICK LLP

DATED: 1-20-17



Michael Morrison
Counsel for Plaintiff and the Class

LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

Thomas W. Falvey
Counsel for Plaintiff and the Class

JML LAW, APLC

DATED: _____

Joseph M. Lovretovich
Counsel for Plaintiff and the Class

STUART KANE LLP

DATED: _____

Robert J. Kane
Counsel for Defendants

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the parties as of the date first written above.

VIVIAN PHILLIPS

DATED: 1-19-2016


Vivian Phillips

ACCENTCARE, INC.

DATED: _____

By: _____

ACCENTCARE HOME HEALTH, INC.

DATED: _____

By: _____

ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC.

DATED: _____

By: _____

APPROVED AS TO FORM AND CONTENT


ALEXANDER KRAKOW & GLICK LLP

DATED: _____

Michael Morrison
Counsel for Plaintiff and the Class

LAW OFFICES OF THOMAS W. FALVEY

DATED: 1/19/2016



Thomas W. Falvey
Counsel for Plaintiff and the Class

JML LAW, APLC

DATED: _____

Joseph M. Lovretovich
Counsel for Plaintiff and the Class

STUART KANE LLP

DATED: _____

Robert J. Kane
Counsel for Defendants

APPROVED AS TO FORM AND CONTENT

ALEXANDER KRAKOW & GLICK LLP

DATED: _____

Michael Morrison
Counsel for Plaintiff and the Class

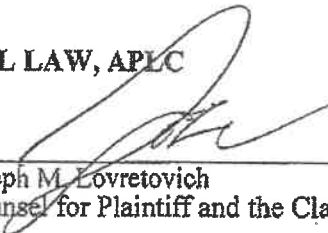
LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

Thomas W. Falvey
Counsel for Plaintiff and the Class

JML LAW, APLC

DATED: _____



Joseph M. Lovretovich
Counsel for Plaintiff and the Class

STUART KANE LLP

DATED: _____

Robert J. Kane
Counsel for Defendants

APPROVED AS TO FORM AND CONTENT

ALEXANDER KRAKOW & GLICK LLP

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DATED: _____

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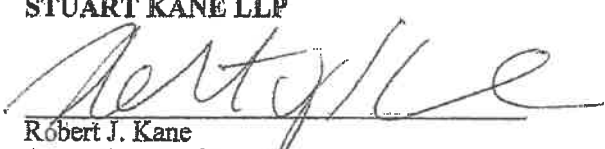
JML LAW, APLC

DATED: _____

Joseph M. Lovretovich
Counsel for Plaintiff and the Class

STUART KANE LLP

DATED: 1/20/17



Robert J. Kane
Counsel for Defendants

EXHIBIT "A"

**NOTICE OF PENDENCY OF CLASS ACTION, PRELIMINARY APPROVAL OF
SETTLEMENT AND HEARING FOR FINAL APPROVAL**

Vivian Phillips v. AccentCare, Inc., et al.

Case No. CIVDS 1620673

Superior Court of California

County of San Bernardino

PLEASE READ THIS NOTICE CAREFULLY

TO: All current and former nurses and other licensed health care professionals employed at AccentCare, Inc., AccentCare Home Health, Inc. and AccentCare Home Health of California, Inc. (hereinafter "AccentCare") in the State of California, who traveled to patients as part of their job duties and/or have been paid on a per visit basis from July 1, 2012 to _____, 20__ and who have not previously released their claims.

YOU ARE POTENTIAL MEMBERS OF THE SETTLEMENT CLASS ENCOMPASSED BY A CLASS ACTION LAWSUIT THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF THE CLASS ACTION LAWSUIT AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS AS A POTENTIAL SETTLEMENT CLASS MEMBER CONCERNING THE SETTLEMENT.

AS EXPLAINED IN MORE DETAIL BELOW, YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS SETTLEMENT.

This Notice is Court Approved. This is not a solicitation from an attorney.

A. WHAT ARE THE CRITICAL DATES?

- * _____, 2017: The last date to mail your written request to be excluded from the Settlement if you do not want to participate in this Settlement or be bound by its terms.
- * _____, 2017: The last date to file with the Court and mail to the Settlement Administrator any written objections to the Settlement.
- * _____, 2017: The hearing before the Court on any objections to the Settlement and to give Final Approval to the Settlement.
- * _____, 2017: The approximate date for processing of Settlement proceeds begins if there are no objections, appeals, or Court-ordered extensions.

B. SUMMARY OF THE CLAIMS

Plaintiff's lawsuit (the "Lawsuit"), alleges that AccentCare owes money to certain nurses and other licensed health care professionals of AccentCare who worked in California at any time

between July 1, 2012 and _____, 20____ (the "Class Period") due to failure to comply with various labor laws. Plaintiff alleges that for those employees who have traveled to patients as part of their job duties and/or have been paid on a per visit basis, AccentCare failed to pay for all time worked, failed to pay the minimum wage for all hours worked and premium pay for overtime hours worked, failed to provide meal and rest periods, including failing to pay premium compensation for missed, interrupted, short or late meal periods and for rest periods not provided, failed to pay for rest periods separate from the per visit rate and to pay at the rate required by law, failed to provide accurate wage statements and failed to pay such terminating employees all the wages owed upon separation of employment. On behalf of herself and other hourly employees allegedly not paid all the wages owed to them during the Class Period ("Class Members"), Plaintiff seeks recovery of unpaid wages, liquidated damages, restitution, statutory penalties, civil penalties, interest, costs of suit and attorney's fees.

AccentCare denies all of Plaintiff's claims and maintains that it has complied with all labor laws. AccentCare further contends that for purposes other than settlement, the Lawsuit is not appropriate for class action treatment. The San Bernardino County Superior Court (the "Court"), in which the Lawsuit is pending, has not decided whether or not AccentCare violated any laws or whether any current or former employee of AccentCare is entitled to any money or other relief.

C. WHY YOU ARE RECEIVING THIS NOTICE

On [date of preliminary approval], the Court preliminarily approved a settlement of the Lawsuit (the "Settlement"). According to the records of AccentCare you are a Class Member. Because you are a Class Member, you have the right to participate in, object to, or exclude yourself from the Settlement. This letter explains your legal rights and options with respect to the Settlement.

D. THE TERMS OF THE SETTLEMENT

AccentCare has agreed to pay up to the Maximum Settlement Amount of \$1,500,000 in exchange for a release of the claims asserted by Plaintiff and Class Members in the Lawsuit. It is estimated that, after deducting from the Maximum Settlement Amount amounts for settlement administration, attorney's fees to be requested from the Court (no more than \$500,000), attorney's costs to be requested from the Court, and an enhancement payment to Plaintiff to be requested from the Court (no more than \$20,000), approximately \$950,000 will remain (the "Net Settlement Amount") that will be available for distribution to Class Members.

The parties estimate that Class Members who participate in the Settlement will receive, on average, the gross amount (before taxes) of approximately \$700. Depending on how long they worked for AccentCare, the amount they receive if they participate in the Settlement may be more or less than this estimated average amount.

E. YOUR OPTIONS

As a class member, you have three options: 1) Participate In The Settlement; 2) Object To The Settlement; or 3) Request Exclusion From The Settlement.

1. Participate In The Settlement

In order to receive a share of settlement benefits, you do not need to do anything. As long as you do not exclude yourself from the Settlement, you will receive a share of settlement benefits if the

Settlement is finally approved by the Court. If you participate in the Settlement, please advise the Settlement Administrator if your address changes. AccentCare will not retaliate or take any adverse action against any Class Member who participates in the Lawsuit, or elects not to participate.

The amount of the share of the settlement payable to participating Class Members will be determined by the number of patient visits Class Members made for AccentCare during the Class Period. If you believe that AccentCare does not have accurate records of when you worked or how many patient visits you made for AccentCare during the Class Period, you may submit to the Settlement Administrator written documentation to prove when you worked or how many patient visits you made for AccentCare. Unless you submit documents proving that you worked for AccentCare during dates other than those reflected by the records of AccentCare, the records of AccentCare will be deemed conclusive for determining the amount of your settlement payment.

If you wish to dispute the records of AccentCare regarding the dates, length of your employment or number of patient visits you made, please send your documents to the Settlement Administrator at the following address:

In order to be considered, documents sent to the Settlement Administrator must be received or postmarked by [date].

2. Object To The Settlement

As long as you do not exclude yourself from the Settlement, you have the right to object to the Settlement. To do so, an objection in writing must be filed with the Court, and copies must be sent to the attorneys for the parties, at the addresses listed below. You can file the objection yourself or have an attorney, at your expense, file the objection for you. Your objection must be received or postmarked no later than [date]. If you object to the Settlement and do not request exclusion from the Settlement, and the Settlement is finally approved, you will still receive a share of settlement benefits.

Class Counsel

Michael Morrison, Esq.
Alexander Krakow & Glick LLP
401 Wilshire Blvd., Ste. 1000
Santa Monica, CA 90401

Thomas W. Falvey, Esq.
Michael H. Boyamian, Esq.
Armand R. Kizirian, Esq.
Law Offices of Thomas W. Falvey
550 N. Brand Blvd., Fl. 15
Glendale, CA 91203-1900

Joseph M. Lovretovich, Esq.
David F. Tibor, Esq.
JML Law
21052 Oxnard Street
Woodland Hills, CA 91367

AccentCare Counsel

Robert J. Kane, Esq.
Stuart Kane LLP
620 Newport Center Dr., Ste. 200
Newport Beach, CA 92660

Court

Orange County Superior Court
Department CX-101
700 Civic Center Drive West
Santa Ana, CA 92701

3. Exclude Yourself From The Settlement

If you wish to exclude yourself from the settlement, you must send a letter to the Settlement Administrator containing the case name (Vivian Phillips v. AccentCare, Inc., et al.), case number CIVDS 1620673, and your name, address, telephone number and social security number, stating that

you wish to exclude yourself from the Settlement and you understand that, by doing so, you will not receive any settlement benefits under the Settlement.

If you exclude yourself from the Settlement, you will not be entitled to recover any settlement benefits or object to the Settlement (which means if you submit both a request for exclusion and an objection, the objection will be disregarded), but you will retain the right to bring any claims you may have against AccentCare. If you do not exclude yourself from the Settlement, you will upon final approval of the Settlement be bound by the release of claims against AccentCare described below and you will lose the right to sue AccentCare for any of the claims asserted in the Lawsuit.

F. RELEASE OF CLAIMS; WAIVER; ASSIGNMENT OF RIGHTS

1. **Release:** Effective as of the Final Effective Date, each member of the Final Settlement Class and his/her respective heirs, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and assigns (collectively, the "Releasing Persons") hereby forever completely release and discharge AccentCare and their past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, payroll agencies, affiliated organizations, insurers, reinsurers, and assigns, and each of their past, present and future officers, directors, trustees, shareholders, agents, employees, attorneys, accountants, contractors, representatives, partners, joint venturers, investors, investment bankers, indemnitees and benefit plans sponsored or administered by AccentCare, divisions, units, branches and other persons or entities acting on their behalf (collectively, the "Released Persons"), from any and all claims, demands, rights, liabilities, expenses, and losses of any kind, whether known or unknown, that any of the Releasing Persons has or may have against any of the Released Persons at any time prior to the date of preliminary approval of the settlement, which were made or could have been made based on the facts asserted in the August 31, 2016 catalyst letter sent by Michael Morrison, Esq. to Defendants and its Chief Executive Officer, in the November 23, 2016 letter to the California Labor and Workforce Development Agency sent by Michael Boyamian, Esq., and/or in the San Bernardino Superior Court Complaint, including but not limited to claims for violations of state wage and hour laws, minimum wage claims, work "off the clock" claims, overtime claims, meal period claims, rest period claims, including but not limited to claims that Class Members paid on a per visit (piece-rate) basis should have been paid separate from the per visit rate for rest periods and at such rates provided by statute and/or case law, claims that premiums should be paid to Class Members for interrupted, short or late meal periods or for rest periods not provided, claims for failure to provide complete and accurate wage statements, waiting time and timely payment of wages claims, unfair business practices claims, PAGA claims, liquidated damages claims, claims under California Business and Professions Code §17200 and §17203, California Labor Code §§ 201, 202, 203, 204, 210, 216, 218, 218.5, 218.6, 225.5, 226, 226(a), 226.2, 226.7, 510, 512, 558, 1021.5, 1174, 1194, 1194.2, 1197, 1199, Cal. Code Regs., tit. 8 § 11050, subd. 12, and compensatory claims for damages, liquidated damages, restitution, statutory penalties, civil penalties, including under the Private Attorneys General Act, Labor Code § 2699, et seq., and claims for interest, costs of suit, attorneys' fees and/or other liabilities related to any of the foregoing; and any claim arising out of or relating to the negotiations leading to this settlement.

2. **Waiver of California Civil Code Section 1542:** The Releasing Persons acknowledge that they each may have claims actually alleged in the Lawsuit, the August 31, 2016 Catalyst Letter and the LWDA Letter that are presently unknown and that the release contained in this Agreement is intended to and will fully, finally, and forever discharge all such claims, whether now asserted or unasserted, known or unknown, to the extent they fall within the description of claims being released above.

ACCORDINGLY, WITH RESPECT TO THE CLAIMS RELEASED ABOVE, EACH RELEASING PERSON EXPRESSLY UNDERSTANDS AND AGREES TO WAIVE THE PROVISIONS OF, AND RELINQUISH ALL RIGHTS AND BENEFITS AFFORDED BY, CALIFORNIA CIVIL CODE § 1542, WHICH 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 Releasing Persons 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 subject matter released herein, but agree that they have taken that possibility into account in reaching this Agreement and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Persons expressly assume the risk, they freely and voluntarily give the release as set forth above.

G. FINAL FAIRNESS HEARING

The Court has scheduled a Final Fairness Hearing for [date] and [time] in Department [] of the San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415-0210. At the Final Fairness Hearing, the Court will decide whether or not to grant final approval to the Settlement. The Court will also rule at the Final Fairness Hearing on the application by Plaintiff for an award of attorney's fees (no more than \$500,000), costs (no more than \$) and a service enhancement to Plaintiff (no more than \$20,000). You have the right to attend the Final Fairness Hearing and, if you objected to the Settlement, address the Court. You also have the right to retain an attorney, at your own expense, to speak on your behalf.

H. WHERE CAN I FIND ADDITIONAL INFORMATION?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this Litigation, including the Settlement Agreement, may be examined (a) online on the San Bernardino County Superior Court's website, at www.sbcourts.org, or (b) in person at the office of the Clerk of the Court, San Bernardino County Superior Court, 247 West Third Street, San Bernardino, CA 92415-0210, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Any questions regarding this Notice or what you need to do to exclude yourself from or object to the Settlement should be directed to the Settlement Administrator at the address and telephone number listed in Paragraph E.1 above on Page 3 of this Notice. Alternatively, you may contact Class Counsel at the address and telephone number also set forth on page 3 of this Notice. If your address changes, or is different from the one on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.

EXHIBIT "B"

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN BERNARDINO**
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11 VIVIAN PHILLIPS, individually and on
12 behalf of other persons similarly situated,

13 Plaintiffs,

14 v.

15 ACCENTCARE, INC.; ACCENTCARE
16 HOME HEALTH, INC.; and
17 ACCENTCARE HOME HEALTH OF
18 CALIFORNIA, INC.; and DOES 1 through
19 10, Inclusive,

20 Defendants.
21

CASE NO.: CIVDS 1620673

Honorable David Cohn
Department S26

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

22 This matter having come before the Court for hearing on _____, 2017,
23 pursuant to the Order Preliminarily Approving Settlement and Providing for Class Notice entered
24 _____, 2017 ("Preliminary Approval Order"), on the application of the Parties
25 for final approval of the settlement set forth in the Settlement Agreement and Release of Claims
26 ("Settlement Agreement"), and due and adequate notice having been given to the Plaintiff
27 Settlement Class as defined below as required by the Preliminary Approval Order, and the Court
28 having considered all papers filed and proceedings had herein and otherwise being fully

1 informed, and good cause appearing therefor, it is:

2 **ORDERED, ADJUDGED AND DECREED** that:

3 1. All terms used herein shall have the same meaning as defined in the Settlement
4 Agreement.

5 2. This Court has jurisdiction over the subject matter of each of the claims asserted,
6 in the Litigation as defined in Paragraph II, L of the Settlement Agreement, and has personal
7 jurisdiction over all parties to the Litigation, including all members of the Settlement Class as
8 defined in Paragraph II, P of the Settlement Agreement who have not elected to exclude
9 themselves ("opt-out") from the settlement.

10 3. Notice to the Settlement Class, including the mailing or re-mailing of the Notice
11 of Pendency of Class Action as set forth in the Settlement Agreement, has been completed in
12 conformity with the Preliminary Approval Order, including mailing of individual notice to all
13 members of the Settlement Class who could be identified through reasonable effort. The Court
14 finds that this notice was the best notice practicable under the circumstances, that it provided due
15 and adequate notice of the proceedings and of the matters set forth therein, and that it fully
16 satisfies the requirements of California law and due process.

17 4. The Court hereby approves the settlement set forth in the Settlement Agreement,
18 including the settlement awards, released claims and other terms therein, and finds that the
19 Settlement Agreement, and the settlement, are, in all respects, fair, adequate and reasonable to
20 the parties, including the Named Plaintiff and members of the Settlement Class, and directs the
21 parties to effectuate the Settlement according to its terms. The Court also finds that the
22 Settlement Class should be certified as a class as part of this settlement and that relief with
23 respect to the Settlement Class as a whole is appropriate. In particular, the Court finds, solely for
24 purposes of approving the settlement and for no other purpose and with no other effect on this
25 litigation, that the proposed Settlement Class meets the requirements for certification under §382
26 of the California Code of Civil Procedure, including that (a) the proposed class is ascertainable
27 and so numerous that joinder of all members of the class is impracticable, (b) there are for
28 purposes of settlement, predominant questions of law or fact common to the proposed class and a

1 sufficient community of interest among the members of the proposed class with respect to the
2 subject matter of the litigation, (c) the claims of Named Plaintiff Vivian Phillips are typical of
3 the claims of the members of the proposed class, (d) Named Plaintiff Vivian Phillips, as
4 representative of the class, has, with respect to the settlement, fairly and adequately protected the
5 interests of the members of the class, (e) a class action is superior to other available methods for
6 efficiently adjudicating this controversy and for resolving the claims asserted in the Litigation
7 through this settlement, and (f) Class Counsel are qualified to act as counsel for the Named
8 Plaintiff and the other members of the proposed class.

9 5. For purposes of this Order and Judgment, and consistent with the Settlement
10 Agreement, the term "Settlement Class," which is hereby certified pursuant to California Code
11 of Civil Procedure §382, which means all current and former nurses and other licensed health
12 care professionals employed in California by AccentCare, Inc.; AccentCare Home Health, Inc.;
13 and AccentCare Home Health of California, Inc. who have, in any payroll period between July 1,
14 2012 to _____, 2017, the date of the Preliminary Approval Order, traveled to patients as
15 part of their job duties and/or been paid on a per visit basis, and who have not previously
16 released their claims.

17 6. As of the Final Effective Date (as defined in Paragraph II, K of the Settlement
18 Agreement), each and every Released Claim (as defined in Paragraph X of the Settlement
19 Agreement) of every member of the Settlement Class who did not exclude him or herself from
20 the settlement (*i.e.*, "opt-out") in accordance with the procedures set forth in Paragraph VI, A of
21 the Settlement Agreement, is and shall be deemed to be conclusively released as against the
22 Released Persons. "Released Persons" (as defined in Paragraph X, A of the Settlement
23 Agreement) means all of the following: AccentCare, Inc.; AccentCare of California, Inc.;
24 AccentCare Home Health, Inc.; and AccentCare Home Health of California, Inc. (collectively
25 hereinafter referred to as "AccentCare"), and its past, present, and future parents, affiliates,
26 subsidiaries, divisions, predecessors, successors, partners, joint venturers, payroll agencies,
27 affiliated organizations, insurers, reinsurers, and assigns, and each of their past, present and
28 future officers, directors, trustees, shareholders, agents, employees, attorneys, accountants,

1 contractors, representatives, partners, joint venturers, investors, investment bankers, indemnitees,
2 benefit plans sponsored or administered by AccentCare, divisions, units, branches and other
3 persons or entities acting on their behalf.

4 7. As of the Final Effective Date, the Named Plaintiff and all of the members of the
5 Settlement Class who did not exclude themselves from the settlement in accordance with the
6 procedures set forth in Paragraph VI, A of the Settlement Agreement are hereby forever barred
7 and enjoined from commencing, prosecuting or continuing to prosecute, either directly or
8 indirectly, against the Released Persons, in this or any other jurisdiction or forum, any and all
9 Released Claims as defined in Paragraph X of the Settlement Agreement.

10 8. Neither the Settlement Agreement nor the settlement constitutes an admission or
11 concession by AccentCare or any of the other Released Persons, nor does this Order and
12 Judgment constitute a finding of any kind by the Court, regarding the validity of any of the
13 claims asserted in the Litigation as defined in Paragraph II, L of the Settlement Agreement, or of
14 any wrongdoing by AccentCare or any of the other Released Persons. Furthermore, neither the
15 Settlement Agreement nor the settlement shall be used in any way or for any purpose as (a) an
16 admission of any fault, omission or wrongdoing by AccentCare or any of the Released Persons,
17 or (b) an admission or evidence that any other alleged class of AccentCare employees should be
18 certified for settlement or for any other purpose. Neither this Order and Judgment, nor the
19 Settlement Agreement, nor any of the exhibits thereto, nor any negotiations or proceedings
20 related thereto, shall be considered as or deemed to be evidence of a concession or admission
21 with regard to the denials or defenses of AccentCare or any of the other Released Persons, nor
22 shall this Order and Judgment, nor the Settlement Agreement, nor its exhibits or the negotiations
23 that led to it be offered or admissible in evidence in any action or proceeding against AccentCare
24 or any of the Released Persons in any court, administrative agency or other tribunal for any
25 purpose whatsoever other than to enforce the provisions of this Order and Judgment or the
26 Settlement Agreement. However, nothing in this paragraph shall prevent AccentCare or any
27 other of the Released Persons from filing or otherwise relying on this Order and Judgment, the
28 Settlement Agreement, its exhibits or any other papers and records on file in the Litigation in any

1 court, administrative agency or other tribunal, as evidence of the settlement that has been entered
2 into by AccentCare and the other Released Persons to support a defense of res judicata, collateral
3 estoppel, release or other claim of issue preclusion or similar defense as to the Released Claims.

4 9. (a) Alexander Krakow & Glick LLP and Michael Morrison, Esq., the Law
5 Offices of Thomas W. Falvey and Thomas W. Falvey, Esq., Michael H. Boyamian, Esq. and
6 Armand R. Kizirian, Esq. and JML Law and Joseph M. Lovretovich, Esq. and David F. Tibor,
7 Esq., are hereby confirmed and appointed as Class Counsel. In accordance with Paragraph IX,
8 A, 1 of the Settlement Agreement, the Court hereby awards Class Counsel fees and litigation
9 costs in the total amount of \$_____.

10 (b) Named Plaintiff Vivian Phillips is hereby confirmed and appointed as
11 representative of the class. In accordance with Paragraph IX, A, 3 of the Settlement Agreement,
12 the Court hereby awards Named Plaintiff Vivian Phillips an enhancement payment in the total
13 amount of \$_____.

14 (c) In accordance with the Court's Preliminary Approval Order, in which the Court
15 appointed _____ as the parties' chosen Settlement Administrator, and
16 in accordance with Paragraph IX, A, 2 of the Settlement Agreement under which Defendant
17 agreed to pay the reasonable expenses of the Settlement Administrator up to a maximum of
18 \$_____ the Court has been advised that on _____, 2017, the Settlement
19 Administrator submitted to the parties an estimate of its expected total settlement administration
20 fees and costs in the amount of \$_____, which the Settlement Administrator stated
21 it expected would be its total fees and costs through the completion of this case.

22 10. Rule 3.769(h) of the California Rules of Court provides that "[i]f the court
23 approves the settlement agreement after the final approval hearing, the court must make and
24 enter judgment. The judgment must include a provision for the retention of the court's
25 jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an
26 order dismissing the action at the same time as, or after, entry of judgment." Accordingly,
27 without affecting the finality of this Order and Judgment in any way, the Court hereby retains
28 continuing jurisdiction over the parties to enforce the terms of the Judgment entered herein.

1 11. In the event the settlement does not become effective in accordance with the
2 terms of the Settlement Agreement, then this Order and Judgment shall be rendered null and void
3 to the extent provided by and in accordance with the Settlement Agreement and shall be vacated
4 and, in such event, all orders entered and releases delivered in connection herewith shall be null
5 and void to the extent provided by and in accordance with the Settlement Agreement.

6 12. Judgment is hereby entered in this Litigation in accordance with the foregoing
7 Order and Judgment and in accordance with the terms and conditions provided in the Settlement
8 Agreement.

9 **IT IS SO ORDERED AND ADJUDGED.**

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11 DATED: _____, 2017

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13 By: _____
14 HONORABLE _____
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EXHIBIT "C"

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER**
10

11 VIVIAN PHILLIPS, individually, and on
12 behalf of other persons similarly situated

13 Plaintiffs,

14 v.

15 ACCENTCARE, INC.; ACCENTCARE
16 HOME HEALTH, INC.; and
17 ACCENTCARE HOME HEALTH OF
18 CALIFORNIA, INC.; and DOES 1 through
19 10, Inclusive,

20 Defendants.

CASE NO.: CIVDS 1620673

Honorable David Cohn
Department S26

**[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR CLASS NOTICE**

Date: March 1, 2017

Time: 8:30 am

Dept.: S26

21
22 **WHEREAS**, an action is pending before the Court entitled Vivian Phillips v.
23 AccentCare, Inc., et al., Case No. CIVDS 1620673;

24 **WHEREAS**, the parties having made application for an order approving the settlement
25 of this action, in accordance with a Settlement Agreement and Release of Claims (collectively,
26 the "Settlement Agreement" or "Agreement," attached hereto as Exhibit A), which, together with
27 the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the
28 Litigation (as defined in Paragraph II, L of the Agreement) and for entry of judgment in

1 accordance with the terms and conditions set forth in the Settlement Agreement; and the Court
2 having read and considered the Settlement Agreement and the exhibits annexed thereto; and

3 WHEREAS, all defined terms contained herein shall have the same meanings as are set
4 forth in the Settlement Agreement;

5 NOW, THEREFORE, IT IS HEREBY ORDERED:

6 1. The Court does hereby preliminarily approve the Settlement Agreement and the
7 settlement set forth therein as being fair, adequate and reasonable.

8 2. Solely for purposes of the proposed settlement, a Settlement Class is hereby
9 provisionally certified pursuant to California Code of Civil Procedure §382 consisting of all
10 current and former nurses and other licensed health care professionals employed in positions in
11 California by AccentCare, Inc.; AccentCare Home Health, Inc.; and AccentCare Home Health of
12 California, Inc. who have, in any payroll period between July 1, 2012 and the date of this Order,
13 traveled to patients as part of their job duties and/or been paid on a per visit basis and who have
14 not previously released their claims. In connection with this provisional certification, the Court
15 conditionally finds, solely for purposes of approving the settlement and for no other purpose and
16 with no other effect on the Litigation, that the proposed Settlement Class meets the requirements
17 for certification under §382 of the California Code of Civil Procedure, including that (a) the
18 proposed class is ascertainable and so numerous that joinder of all members of the class is
19 impracticable, (b) there are, for purposes of the settlement, predominant questions of law or fact
20 common to the proposed class and a sufficient community of interest among the members of the
21 proposed class with respect to the subject matter of the Litigation, (c) the claims of the Named
22 Plaintiff Vivian Phillips are typical of the claims of the members of the proposed class, (d)
23 Named Plaintiff Vivian Phillips has fairly and adequately protected the interests of the members
24 of the proposed class with respect to the proposed settlement, (e) a class action is superior to
25 other available methods for efficient adjudication of and settlement of the claims asserted in this
26 controversy, and (f) Class Counsel are qualified to act as counsel for the Named Plaintiff and for
27 all other members of the proposed class.

28 3. Solely for purposes of the proposed settlement, the Court does hereby

1 preliminarily approve Alexander Krakow & Glick LLP and Michael Morrison, Esq., the Law
2 Offices of Thomas W. Falvey and Thomas W. Falvey, Esq., Michael H. Boyamian, Esq. and
3 Armand R. Kizirian, Esq. and JML Law and Joseph M. Lovretovich, Esq. and David F. Tibor,
4 Esq., as Class Counsel, and Named Plaintiff Vivian Phillips as the representative of the class,
5 and does hereby appoint, Phoenix Class Action Administration Solutions, as the parties' chosen
6 Settlement Administrator.

7 4. A hearing, for purposes of the Parties' presentation to the Court of their proposed
8 Final Approval Order (hereafter, "Final Approval Hearing"), shall be held before this Court on
9 _____, 2017, at ____m., in Department _____ 1 of the Superior Court of
10 the State of California, in and for the County of San Bernardino, 247 West Third Street, San
11 Bernardino, CA 92415-0210, to determine whether the proposed settlement of the Litigation on
12 the terms and conditions provided for in the Settlement Agreement is fair, adequate and
13 reasonable and should be approved by the Court; whether the Final Approval Order and
14 Judgment as provided in Paragraph II, H, of the Settlement Agreement should be entered herein;
15 and to determine the amount of attorneys' fees and costs that should be awarded to Class
16 Counsel, and the amount of enhancement payment that should be awarded to the Named
17 Plaintiff.

18 5. The Court approves, as to form and content, the Notice of Pendency of Class
19 Action, Preliminary Approval of Settlement and Hearing for Final Approval (the "Class Notice")
20 annexed to the Settlement Agreement and to this Preliminary Approval Order as Exhibit B, and
21 finds that the distribution of the Class Notice substantially in the manner set forth in Paragraph 6
22 of this Order meets the requirements of California law and due process, and is the best notice
23 practicable under the circumstances and shall constitute due and sufficient notice to all Persons
24 entitled thereto.

25 6. The Settlement Administrator shall supervise and administer the notice procedure
26 as more fully set forth below:

27 (a) Within 10 business days following the Court's entry of this Preliminary Approval
28 Order, Defendant will provide the Settlement Administrator with a confidential list containing

1 the name and last known address, telephone number (if known), social security number, and
2 number of patient visits made during the Class Period for each member of the Settlement Class;

3 (b) Within 10 business days following receipt by the Settlement Administrator of the
4 confidential list referred to in the preceding subparagraph, the Settlement Administrator shall
5 distribute, by first class mailing to all Settlement Class members, a copy of the Class Notice;

6 (c) At least 10 days prior to the date on which the Court schedules the Final Approval
7 Hearing, the Settlement Administrator shall serve on Defendant's counsel and Class Counsel,
8 and Class Counsel shall file with the Court, proof, by affidavit or declaration, of such
9 distribution; and

10 (d) The Settlement Administrator shall take reasonable steps to locate Settlement
11 Class members as more fully set forth in Paragraphs IV and V of the Settlement Agreement.

12 7. All Settlement Class members shall be bound by all determinations and
13 judgments in the Litigation concerning the settlement, whether favorable or unfavorable to any
14 of them individually or to the Settlement Class.

15 8. Any member of the Settlement Class may enter an appearance in the Litigation, at
16 his or her own expense, individually or through counsel of his or her own choice. Any member
17 of the Settlement Class who does not enter an appearance or exclude him or herself from the
18 Class (i.e., opt-out), will be represented by Class Counsel.

19 9. Pending final determination of whether the settlement should be approved, the
20 Named Plaintiff shall not, either directly, representatively or in any other capacity, commence or
21 prosecute against Defendants or any of the Released Persons, any action or proceeding in any
22 court or tribunal asserting any of the Released Claims.

23 10. Any Settlement Class member who wishes to be excluded (opt-out) from the
24 Settlement Class and not participate in the proposed settlement must submit a written request on
25 or before _____, for exclusion which includes:

26 (a) The Settlement Class member's name;

27 (b) The Settlement Class member's address, telephone number and the last four digits
28 of his/her Social Security Number; and

1 (c) A statement stating "I wish to exclude myself from the settlement reached in the
2 matter of Phillips v. AccentCare. I understand by excluding myself, I will not receive my
3 settlement share."

4 (d) Sign the written request for exclusion;

5 (e) Return the request for exclusion to the Settlement Administrator by first-class
6 mail to the address provided in the Class Notice; and

7 (f) A postmark no later than 45 days after the date of mailing of the Class Notice by
8 the Settlement Administrator, or, in the event a second mailing was required under Paragraph II,
9 C of the Settlement Agreement, no later than 60 days after the date of the first mailing.

10 11. Any member of the Settlement Class may object to the proposed settlement in
11 writing. Any member of the Settlement Class may also appear at the Final Approval Hearing,
12 either in person or through an attorney at the Settlement Class member's own expense, provided
13 such person notifies the Court of his or her intent to do so, and if he or she intends to appear
14 through an attorney, the name and address of the attorney. All written objections, supporting
15 papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify
16 the case name and number (Vivian Phillips v. AccentCare, Inc., et al., Case No. CIVDS
17 1620673), (b) be submitted to the Court either by mailing the objection and supporting papers, if
18 any, for filing to the Clerk of the Superior Court of the State of California in and for the County
19 of San Bernardino, 247 West Third Street, San Bernardino, CA 92415-0210, or by filing them in
20 person at any location of the Superior Court, County of San Bernardino that includes a facility
21 for civil filings, (c) also be mailed by first class mail to the Settlement Administrator at
22 _____, and (d) be filed or postmarked on or before
23 _____, 2017. All objections shall be considered and ruled upon by the
24 Court at the Final Approval Hearing.

25 12. All papers in support of the settlement shall be filed and served no later than
26 _____, 2017.

27 13. At the Final Approval Hearing, the Court shall determine whether the proposed
28 settlement, and any application for attorneys' fees or reimbursement of costs, shall be approved.

14. The Court reserves the right to adjourn the date of the Final Approval Hearing without further notice to the Settlement Class members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement.

DATED: _____, 2017

By: _____
HONORABLE _____

EXHIBIT "D"

**SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS**

1. **Purpose of Agreement.** The purpose of this Settlement Agreement and General Release ("Agreement") is to provide a general release and waiver of all claims, of any nature whatsoever, known or unknown, that Vivian Phillips ("Phillips") has or may have against AccentCare, Inc., AccentCare Home Health, Inc. and AccentCare Home Health of California, Inc. (collectively hereinafter referred to as "AccentCare") including those arising out of her employment with AccentCare, the termination of her employment with AccentCare, and her services as a Named Plaintiff in the purported class action lawsuit ("the Class Action Lawsuit") that Phillips filed against AccentCare which the parties have agreed to settle. The settlement of the class action lawsuit is memorialized in a Settlement Agreement and Release of Claims (hereafter "Class Action Settlement Agreement"), which was entered into between the parties on December __, 2016, and was given preliminary approval by the Court on _____, 2017.

2. **Enhancement Payment Amount.** In consideration of the waivers, releases and covenants contained herein, and subject to and not until the settlement of the Class Action Lawsuit becoming "Final" as that term is defined in the Class Action Settlement Agreement, AccentCare agrees to pay, subject to Court approval, Phillips the total sum of \$20,000.00 from the Total Maximum Settlement Amount, as an enhancement award from which no deductions will be taken and a Form 1099 will be issued. This payment will be made at the same time the other payments are made under the Class Action Settlement Agreement; provided, however, that the payment to be made hereunder will be contingent on AccentCare's receipt of this Agreement fully executed by Phillips. Nothing in this Agreement is intended to preclude Phillips' participation in the class action settlement and receiving a settlement payment in accordance with the schedule of payments set forth in paragraph IX, A, 5 of the Class Action Settlement Agreement and Release of Claims.

Phillips agrees to indemnify, hold harmless AccentCare, and all of its past, present and future affiliates, subsidiaries, divisions, operating companies, predecessors, successors, parent companies, assigns and transferees, and each of their past, present and future agents, officers, directors, insurers, attorneys, shareholders, partners, administrators and employees, and all other related business entities and individuals, from any taxes, penalties, interest, liens, costs or subrogations imposed and/or found and determined to be owing by any court or government agency that may result from receipt of the payment described above.

3. **Full Release Of All Known And Unknown Claims.** In consideration of the payment described in Paragraph 2, and subject to the provisions of Paragraph 3(b) below, Phillips, on behalf of herself and her heirs, executors, administrators, attorneys, agents, successors and assigns, hereby fully releases, acquits and forever discharges AccentCare, and all of its past, present and future affiliates, subsidiaries, divisions, operating companies, predecessors, successors, parent companies, assigns and transferees, and each of their past, present and future agents, officers, directors, insurers, attorneys, shareholders, indemnitees, partners, administrators and employees, and all other related business entities and individuals (collectively "AccentCare"), from and against any and all claims, rights, demands, actions, obligations, liabilities and causes of action, known or unknown, asserted or unasserted, of every kind and nature, which she has or may have against AccentCare through and including the Effective Date of this Agreement, including but not limited to:

- (i) all claims of any nature arising out of or relating to Phillips' employment with AccentCare, any alleged act or omission that took place during that employment, and the termination thereof;
- (ii) all claims relating to any contracts of employment, oral or written, express or implied; claims for alleged violation of the covenant of good faith and fair dealing; claims for alleged wrongful termination, unlawful retaliation in violation of public policy, constructive discharge, alleged adverse employment action, or failure to follow personnel policies or provide employee benefits; claims for alleged unfair business practices of any kind or character; any other claim related to Phillips' employment with AccentCare or the termination thereof, and any claim of any nature arising in tort, including without limitation claims for intentional and/or negligent infliction of emotional distress, breach of privacy, interference, or any other alleged tortious conduct;
- (iii) any and all claims, whether arising under state or federal law, including without limitation the California Labor Code and the California Industrial Welfare Commission Wage Orders, the federal Fair Labor Standards Act and the California Business and Professions Code, Phillips has or may have for payment of wages, bonuses or other employee benefits arising out of her employment with AccentCare or the termination of that employment, including without limitation all claims for alleged unpaid salary or wages, overtime pay, pay for alleged "off the clock" work, penalty pay, premium pay, back pay, reporting time pay, future wage loss, vacation pay, separation or severance pay, pay for alleged business expenses incurred but allegedly not properly reimbursed during employment, claims of any nature whatsoever for alleged non-provision of meal periods and/or rest periods or pay for rest periods as provided by applicable law, including but not limited to employees paid on a piece rate basis being paid separately for rest periods, claims for alleged non-provision of accurate and complete wage statements as provided by applicable law, pay or penalties for alleged untimely or incomplete payment of full wages either during employment or owed at time of termination of employment, statutory fines or penalties, bonuses, stock options, attorneys' fees, and/or claims for penalties and/or damages of all types, including without limitation punitive damages, liquidated damages arising under state or federal wage and hour law, and damages for pain and suffering;
- (iv) any claims Phillips has or may have arising under any federal, state or local statutory or common law, including any law prohibiting employment discrimination, harassment and/or retaliation, whether on the basis of gender, sex, race, disability, marital status, religion, national origin, or the fact she made any claim or complaint to or filed a lawsuit against AccentCare or on any other ground, including but not limited to claims for alleged discrimination and/or harassment and/or retaliation arising under the California Fair Employment and Housing Act, as amended, and/or the federal Civil Rights Acts, as amended, claims arising under the California Family Rights Act, as amended, or the federal Family and Medical Leave Act, as amended, and any other claim, of any nature

whatsoever, arising out of or during Phillips' employment with AccentCare or the termination thereof; and

- (v) any and all claims, facts or allegations which were or could have been alleged in the Class Action Lawsuit.
 - a. It is understood and agreed that upon signing this Agreement and at any time thereafter, Phillips will be prohibited from making any claim, filing any lawsuit or participating either as a named plaintiff or unnamed putative class member in any claim, lawsuit, action or class action against AccentCare based on any claim that arose or act or omission that allegedly occurred during her employment with AccentCare or in connection with the termination thereof.
 - b. With respect to all of the claims, known or unknown, released in this Agreement, Phillips expressly waives the provisions of California Civil Code Section 1542 which provides:

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.

Phillips understands that Section 1542 gives her the right not to release existing claims of which she is not now aware, unless she voluntarily chooses to waive that right. Having been so apprised, she nevertheless voluntarily elects to, and does, waive the right described in Section 1542, and elects to assume all risks for claims that now exist or may exist in her favor, even if those claims are not presently known to her.

4. **No Rehire and Verification of Employment.** Phillips acknowledges and agrees that she is permanently ineligible for rehire by or with and shall not, at any time in the future, apply to or accept employment by or with AccentCare, and AccentCare may disregard any application for employment Phillips submits, and Phillips shall not bring any claim arising from the disregard of such application or the termination of any future employment should Phillips disregard this provision and nevertheless seek and obtain employment. Phillips further acknowledges and agrees that she is also ineligible to provide services in a contingent staffing capacity, including as an independent contractor, to AccentCare. If Phillips is working at a company which is later acquired by AccentCare, she will not be required to resign her employment,

5. **Covenant of Confidentiality and Nondisclosure.** In addition to the obligations provided under Paragraph XIII of the Class Action Settlement Agreement, Phillips acknowledges and agrees that, other than the information that has been made public in connection with the settlement of the Class Action Lawsuit, the terms and conditions of this Agreement are strictly confidential and shall not be disclosed to any other person, except legal counsel, financial advisors, and taxing authorities (each of whom shall be advised of this covenant of confidentiality and nondisclosure), or to carry out the terms of this Agreement. In response to inquiries, if any, regarding such claims, Phillips shall state only that her disputes with AccentCare have been resolved, that she supports the class action settlement, and nothing more. Phillips shall refer any other inquiries she receives from class members either to Class Counsel or to the Settlement Administrator designated in the Class Action Settlement Agreement.

6. **Confidential Information.** If she has not already done so, Phillips agrees to return to AccentCare any documents and other property in her possession that were originated by anyone, including Phillips, as part of her duties for AccentCare, other than pay stubs, policy manuals and Records of Daily Activity, or any similar documents lawfully in her possession. Phillips will protect, and not disclose, any Protected Health Information ("PHI") in her possession, including, but not limited to PHI on Records of Daily Activity. Phillips agrees to return the original and all copies of such, documents and property to AccentCare on or before the Effective Date of this Agreement. Phillips also agrees that, unless she has already done so, she will provide AccentCare with any and all password(s) to computer files of which she has knowledge and shall allow AccentCare to confirm such password(s).

7. **Non-Disclosure.** Phillips further agrees that she has a continuing obligation not to disclose any of AccentCare's confidential or proprietary information that came into her possession during her employment with AccentCare.

8. **No Admission Of Liability.** Nothing in this Agreement, nor the fact that a settlement has been reached or that a payment is being made under it, shall be construed in any manner as an admission by AccentCare that any of Phillips' allegations are true or have merit, or that AccentCare in any way violated Phillips' rights or caused her any injury or damage. AccentCare denies all of Phillips' allegations. Rather, the intention of the Parties is that this settlement and release is solely in furtherance of a compromise of disputed claims and a desire to buy peace and avoid the time and expense of litigation.

9. **No Pending Or Future Claims Or Lawsuits.** Phillips represents that she has no lawsuits, claims, or actions pending in her name, or on behalf of any other person or entity, against AccentCare, and the Class Action Lawsuit pending in the Superior Court of California, County of San Bernardino. She also represents that she does not intend to bring nor will she institute any claims on her own behalf or on behalf of any other person or entity against AccentCare.

10. **Costs and Attorneys' Fees.** Phillips understands and agrees that this Agreement includes a release of all claims for costs, expenses, and attorneys' fees, taxable or otherwise, incurred by her in connection with or arising out of the Class Action Lawsuit, or the claims she previously asserted against AccentCare. Phillips shall bear and be fully responsible for her costs, expenses and attorneys' fees.

11. **Job References.** Phillips will direct all individuals wishing to inquire about her employment with AccentCare to its Human Resources Department which will respond with only

Phillips' last position and dates of employment except that this provision shall not apply to any request from a prospective employer who provides a release signed by Phillips pursuant to the Fair Credit Reporting Act or any state counterpart.

12. **Voluntary Agreement.** Phillips agrees that she knows and understands the contents of this Agreement, that she has been given a reasonable period of time to consider it, that she has consulted with her attorneys with respect to it and has been fully advised concerning her legal rights, and the claims she is waiving and releasing under this Agreement, that she has executed it voluntarily and of her own free will, and that she understands that this is a full, final release of any and all claims, known or unknown, she has or may have against AccentCare.

13. **Headings: Severability.** The headings in this Agreement are for convenience only. In the event that any provision in this Agreement shall be held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

14. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of California, except that it shall be given a fair and reasonable construction in accordance with the intentions of the parties and without regard to or aid of California Civil Code §1654.

15. **Entire Agreement.** This Agreement sets forth the entire agreement between AccentCare and Phillips with respect to the resolution and waiver of all claims Phillips has or may have against AccentCare, and supersedes any prior or contemporaneous agreements, understandings, or representations, whether oral or written, between such Parties regarding this subject. This Agreement may not be altered, amended or modified, except by a further written agreement executed by Phillips and an authorized representative of AccentCare.

16. **Counterparts: Facsimile Signatures.** This Agreement may be signed in counterparts. Facsimile and PDF copies of Phillips' signature shall be legally binding.

17. **Effective Date.** The Effective Date of this Agreement shall be the date on which this Agreement is executed by Phillips and an original of Phillips' signature thereon is provided to counsel for AccentCare. The parties have agreed that that date will be no later than ten (10) days after the Court enters its order granting preliminary approval to the settlement of the Class Action Lawsuit. It is understood, however, that if the Court does not grant final approval to the settlement of the Class Action Lawsuit, or if the Court's order granting final approval is reversed on appeal, this Agreement and the releases contained within it shall be null and void and of no further force or effect and no payment shall be made to Phillips hereunder.

VIVIAN PHILLIPS

ACCENTCARE, INC.


Vivian Phillips

By: _____

Dated: 1-19-, 2017

Dated: _____, 2017

Phillips' last position and dates of employment except that this provision shall not apply to any request from a prospective employer who provides a release signed by Phillips pursuant to the Fair Credit Reporting Act or any state counterpart.

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VIVIAN PHILLIPS

ACCENTCARE, INC.

Vivian Phillips

[Signature]

By: *Tracy F. Ryan*

Dated: _____, 2017

Dated: *January 20*, 2017

ACCENTCARE HOME HEALTH, INC.

DATED: _____

By: _____

ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC.


DATED: _____

By: _____

APPROVED AS TO FORM AND CONTENT


ALEXANDER KRAKOW & GLICK LLP

DATED: 1-20-17


Michael Morrison
Counsel for Plaintiff and the Class

LAW OFFICES OF THOMAS W. FALVEY

DATED: 1/19/2016


Thomas W. Falvey
Counsel for Plaintiff and the Class

JML LAW, APLC

DATED: _____

Joseph M. Lovretovich
Counsel for Plaintiff and the Class

STUART KANE LLP

DATED: _____

Robert J. Kane
Counsel for Defendants

ACCENTCARE HOME HEALTH, INC.

DATED: _____

By: _____

**ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC.**

DATED: _____

By: _____

APPROVED AS TO FORM AND CONTENT

ALEXANDER KRAKOW & GLICK LLP

DATED: _____

Michael Morrison
Counsel for Plaintiff and the Class

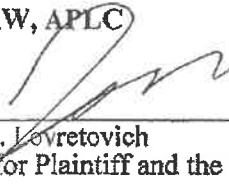
LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

Thomas W. Falvey
Counsel for Plaintiff and the Class

JML LAW, APLC

DATED: 1-19-17



Joseph M. Lovretovich
Counsel for Plaintiff and the Class

STUART KANE LLP

DATED: _____

Robert J. Kane
Counsel for Defendants

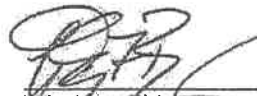
ACCENTCARE HOME HEALTH, INC.

DATED: 1/20/17


By: TIMOTHY F. RYAN

ACCENTCARE HOME HEALTH OF
CALIFORNIA, INC.

DATED: 1/20/17


By: TIMOTHY F. RYAN

APPROVED AS TO FORM AND CONTENT

ALEXANDER KRAKOW & GLICK LLP

DATED: _____

Michael Morrison
Counsel for Plaintiff and the Class

LAW OFFICES OF THOMAS W. FALVEY

DATED: _____

Thomas W. Falvey
Counsel for Plaintiff and the Class

JML LAW, APLC

DATED: _____

Joseph M. Lovretovich
Counsel for Plaintiff and the Class

STUART KANE LLP

DATED: 1/20/17


Robert J. Kane
Counsel for Defendants

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PROOF OF SERVICE

I am over the age of 18 years, not a party to this action, and am employed in the County of Los Angeles, State of California. My business address is ALEXANDER KRAKOW +GLICK LLP, 401 Wilshire Blvd., Suite 1000, Santa Monica, CA 90401.

On January 20, 2017, following the ordinary business practices of ALEXANDER KRAKOW + GLICK LLP as set forth below, I served a true and correct copy of the foregoing document described **[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR CLASS NOTICE** in a sealed envelope, with postage fully prepaid, addressed as follows:

[SEE SERVICE LIST]

- (X) BY MAIL. I am readily familiar with ALEXANDER KRAKOW +GLICK LLP's practice for collection and processing of correspondence for mailing with the U.S. Postal Service. Under that practice, in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on the same day with postage fully prepaid at ALEXANDER KRAKOW +GLICK LLP, 401 Wilshire Blvd., Suite 1000, Santa Monica, CA 90401. The above envelope was placed for collection and mailing on the above date following ALEXANDER KRAKOW +GLICK's ordinary business practice. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposition for mailing.
- () BY MAIL. I deposited such envelope in the mail at 401 Wilshire Blvd., Suite 1000, Santa Monica, CA 90401.
- () VIA FACSIMILE. I sent said documents via facsimile.
- () VIA EMAIL. I sent said document(s) via electronic mail to the addressee.
- () VIA FEDEX. I delivered said documents via overnight delivery.
- () BY PERSONAL SERVICE. I caused delivery of said envelope by hand to the offices of the addressee(s).
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- () (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Dated: January 20, 2017


Michael P. Vazquez

SERVICE LIST

CO-COUNSEL FOR PLAINTIFF

Thomas W. Falvey, Esq.
Michael H. Boyamian, Esq.
Arman R. Kizirian, Esq.
LAW OFFICES OF THOMAS W. FALVEY
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
T: 818 547 5200
F: 818 500 9307
Email: thomaswfalvey@gmail.com
mike.falveylaw@gmail.com
armand.falveylaw@gmail.com

Joseph M. Lvretovich, Esq.
David F. Tibor, Esq.
21052 Oxnard Street
Woodland Hills, California 913567
T: 818 610 8800
F: 818 610 3030
Email: jml@jmlaw.com; david@jmlaw.com

COUNSEL FOR DEFENDANTS: ACCENTCARE, INC; ACCENTCARE HOME HEALTH
OF CALIFORNIA, INC., AND ACCENTCARE HOME HEALTH, INC.

Robert J. Kane, Esq.
STUART KANE LLP
620 Newport Center Drive, Suite 200
Newport Beach, California 92660
T: 949 791 5127
F: 949 791 5227
Email: rkane@stuartkane.com