

1 **MAYALL HURLEY**  
2 **A Professional Corporation**  
3 **2453 Grand Canal Boulevard**  
4 **Stockton, California 95207**  
5 **Telephone (209) 477-3833**  
6 **Facsimile (209) 473-4818**  
7 **NICHOLAS J. SCARDIGLI**  
8 **CA State Bar No. 249947**  
9 **WILLIAM J. GORHAM III**  
10 **CA State Bar No. 151773**  
11 **ROBERT J. WASSERMAN**  
12 **CA State Bar No. 258538**

13 **Attorneys for Plaintiff FELECIA M. MOSER**

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF SAN JOAQUIN**

16 **FELECIA M. MOSER, an individual,**

17 **Plaintiff,**

18 **vs.**

19 **O’CONNOR WOODS HOUSING**  
20 **CORPORATION, a corporation, and DOES**  
21 **1-100, inclusive,**

22 **Defendants.**

23 **Case No.: STK-CV-UOE-2014-0009861**

24 **JOINT STIPULATION OF CLASS**  
25 **ACTION SETTLEMENT AGREEMENT**  
26 **AND RELEASE**

27 This Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”) is  
28 made and entered into by and between the Plaintiff Felecia M. Moser (“Plaintiff”), individually and  
on behalf of the putative class, and Defendant O’Connor Woods Housing Corporation  
 (“Defendant”), by and through their respective counsel of record, subject to the terms and  
 conditions hereof and the approval of the Court. The Settlement Agreement is intended to  
 consummate the settlement of the above-captioned matter on a class-wide basis. The Settlement  
 Agreement is made in compromise of disputed claims. Because this matter is a class action, the  
 Settlement Agreement is subject to and must receive preliminary and final approval by the Court.

SMRH:481992465.2

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1 Similarly, because this matter contains claims under the Labor Code Private Attorneys General Act  
2 of 2004, the Settlement Agreement is subject to approval by the Court. In the event that the Court  
3 does not execute and file an Order of Final Approval; the Settlement Agreement does not become  
4 final for any reason; the Settlement Agreement is modified in any material respect; or the Effective  
5 Settlement Date, as defined herein, does not occur, the Settlement Agreement shall be deemed null  
6 and void ab initio and shall be of no force or effect whatsoever, and shall not be referred to for any  
7 purpose whatsoever.

8 **I**

9 **DEFINITIONS**

10 11. "Class" means all individuals who were employed by Defendant in California at any  
11 time between September 25, 2011, and December 31, 2014.

12 12. "Class Counsel" means Mayall Hurley P.C., by and through lead counsel Nicholas  
13 J. Scardigli, William J. Gorham III, and Robert J. Wasserman.

14 13. "Claims Administrator" means Simpluris.

15 14. "Class List" means the list of Class Members to be prepared and provided by  
16 Defendant to the Claims Administrator.

17 15. "Class Member" means any person who is a member of the Class.

18 16. "Class Representative" means Plaintiff Felecia M. Moser.

19 17. "Court" means San Joaquin County Superior Court.

20 18. "Effective Settlement Date" means the date the Court has granted the Order of Final  
21 Approval, without material modification, and either (a) the date for seeking appellate review of the  
22 Court's Order of Final Approval has passed without a timely appeal or request for review having  
23 been made (i.e., 61 days after entry of the trial court's Order of Final Approval and Judgment); or  
24 (b) if an appeal, review, or writ is sought from the Order of Final Approval, the day after the Order  
25 of Final Approval is affirmed or the appeal, review or writ is dismissed or denied, and the Order of  
26 Final Approval is no longer subject to further judicial review.

1           19.     “Final Approval Hearing” means a hearing set by the Court for the purpose of  
2 determining (a) the fairness, adequacy and reasonableness of the Settlement Agreement pursuant to  
3 class-action procedures and requirements; (b) the good faith of the Settlement Agreement pursuant  
4 to Code of Civil Procedure § 877.6; (c) fees and costs, including Class Counsel’s fees and costs  
5 and the Claims Administrator’s fees and costs; Plaintiff’s service payment; and (d) the payment to  
6 the LWDA.

7           20.     “Judgment” means a Judgment on Order of Final Approval of Settlement to be  
8 executed by the Court and entered in the Court records.

9           21.     “LWDA” means the California Labor and Workforce Development Agency.

10          22.     “Notice of Final Approval” means a notice entitled “Notice of Final Approval of  
11 Settlement” to be approved by the Court and to be mailed to Class Members as directed by the  
12 Court.

13          23.     “Notice of Pendency of Class Action” means a notice entitled “Notice of Pendency  
14 of Class Action, Preliminary Approval of Settlement, and Hearing for Final Approval” to be  
15 approved by the Court and to be mailed to Class Members as directed by the Court. The Notice of  
16 Pendency of Class Action shall be in, or substantially similar to, the form attached hereto as  
17 Exhibit 1.

18          24.     “Opt-Out” means a written, signed request by a Class Member to be excluded from  
19 the Class, filed within the time and as directed by the Court in the Notice of Pendency of Class  
20 Action.

21          25.     “Order of Final Approval” means an order executed and filed by the Court entitled  
22 “Order of Final Approval of Settlement” granting final approval to the Settlement Agreement.

23          26.     “Order of Preliminary Approval” means an order executed and filed by the Court  
24 entitled “Order of Preliminary Approval of Settlement.” The Order of Preliminary Approval shall  
25 be in, or substantially similar to, the form attached hereto as Exhibit 2.

1 27. "PAGA" means the Labor Code Private Attorneys General Act of 2004, Labor Code  
2 sections 2698 *et. seq.*

3 28. "Participating Class Members" means any Class Member who does not effectively  
4 Opt-Out of the Class Action.

5 29. "Parties" means Plaintiff and Defendant.

6 30. "Released Claims" means the released claims of Participating Class Members,  
7 described herein as against Defendant and the other Releasees.

8 31. "Releasees" means Defendant and its parent companies, subsidiaries, affiliates,  
9 shareholders, members, agents, predecessors, successors, and assigns.

10 32. "Settlement Amount" means the amount to be paid by or on behalf of Defendant for  
11 the benefit of the Class Members to be deposited into a Settlement Trust Account, upon terms and  
12 conditions set forth herein.

13 33. "Settlement Trust Account" means a client trust account to be set up by the Claims  
14 Administrator in which the Settlement Amount is to be deposited for the benefit of Class Members,  
15 to be administered in a manner to be recommended by the Court consistent with the terms of this  
16 Settlement Agreement.

17 **II**

18 **BACKGROUND AND RECITALS**

19 34. Plaintiff was employed by Defendant in Stockton from October 9, 2007, to her  
20 termination on May 10, 2014.

21 35. After her employment with Defendant ended, Plaintiff, by and through Class  
22 Counsel, sent written notice to the LWDA and Defendant regarding alleged Labor Code violations,  
23 and the facts and theories supporting the alleged violations, on August 5, 2014.

24 36. On September 25, 2014, Plaintiff filed her initial Complaint in the instant matter,  
25 Case No. STK-CV-UOE-2014-0009861, in San Joaquin County Superior Court, alleging four  
26

1 individual causes of action under FEHA and the Labor Code, and one representative cause of  
2 action under PAGA.

3 37. On December 1, 2014, Plaintiff filed her First Amended Complaint, alleging the  
4 same causes of action after meeting and conferring with Defendant regarding perceived  
5 deficiencies in the initial complaint, thereby avoiding a demurrer.

6 38. On February 11, 2016, Plaintiff moved for leave to amend to add the Class claims.  
7 The court granted Plaintiff's motion and Plaintiff filed a second amended complaint, the operative  
8 complaint, on April 13, 2016.

9 39. Throughout the course of the litigation, Class Counsel and Defendant's counsel –  
10 engaged in exhaustive discovery of the PAGA and Class claims. Included in the discovery  
11 exchange was the number of Class Members: 561.

12 40. Defendant denies any liability or wrongdoing of any kind associated with the PAGA  
13 and Class claims being released herein. Defendant contends, among other things, that it has  
14 complied at all times with the California Labor Code, including Labor Code §§ 226 and 2698 *et*  
15 *seq.* Neither the Settlement Agreement nor any other document pertaining to the settlement  
16 contemplated herein shall constitute an admission of liability by Defendant or be offered in any  
17 other case or proceeding as evidence of an admission by Defendant.

18 41. Nevertheless, in the interest of avoiding the costs and disruptions of protracted,  
19 ongoing litigation and the risks inherent therein, and in resolving the PAGA and Class claims,  
20 Plaintiff and Defendant each believes that the settlement negotiated between the Parties and set  
21 forth in the Settlement Agreement is fair, reasonable, and adequate.

22 42. The Parties agree to stipulate to class certification, solely for purposes of settlement.  
23 For settlement purposes only, the Parties agree that the prosecution of separate actions by the Class  
24 Members would create a risk of inconsistent or varying adjudications with respect to individual  
25 Class Members that would establish incompatible standards of conduct for Defendant, and that

1 Defendant is alleged to have acted in such a manner that applies generally to the Class, so that final  
2 relief is appropriate respecting the Class as a whole. If, for any reason, the Settlement Agreement  
3 is not approved, the stipulation to certification will be void.

4 43. The Parties further agree that certification for purposes of settlement is not an  
5 admission that class certification is proper under the standard applied to contested certification  
6 motions and that this Settlement Agreement will not be admissible in this or any other proceeding  
7 as evidence that (a) a class should be certified, and more specifically, that the Class satisfies any of  
8 the requirements and standards applied prior to class certification, including but not limited to,  
9 issues pertaining to suitability, numerosity, typicality, adequacy of the class representative,  
10 standing relative to the Defendant, issues of individuality, and distinctness of questions of fact and  
11 law relative to each member of the Class outweighs common questions or (b) Defendant is liable to  
12 Plaintiff or the Class, other than according to the terms of the Settlement Agreement.

13 44. Class Counsel diligently pursued an investigation of the Class' claims against  
14 Defendant, as did Defendant's counsel, including any and all applicable defenses under the  
15 applicable law. The investigation included, among other things, the exchange of information  
16 pursuant to voluntary discovery and numerous meet and confer efforts between Class Counsel and  
17 Defendant's counsel. Such discovery has led Class Counsel to conclude that the Class faces  
18 challenges to establishing all of the requisite elements of class certification, as well as liability and  
19 damages. Based on the foregoing investigation and evaluation, Class Counsel and Defendant's  
20 counsel are of the opinion that the terms set forth in the Settlement Agreement are fair, reasonable  
21 and adequate, and are in the best interests of the Class. Based on the information produced  
22 pursuant to voluntary discovery and Class Counsel's own independent investigation and  
23 evaluation, Class Counsel believes that the consideration and the terms set forth herein are fair,  
24 reasonable, and adequate, and are in the best interest of the Class in light of all known facts and  
25 circumstances, including the risk of significant delay and uncertainty associated with litigation,

1 various defenses asserted by Defendant, the likely difficulties with class certification, and  
2 numerous potential appellate issues; Defendant's counsel concurs in this assessment.

3 **III**

4 **TERMS AND CONDITIONS OF SETTLEMENT**

5 45. **Establishment of the Settlement Trust Account.**

6 The settlement is being made on a non-reversionary basis, such that Defendant will pay the  
7 entirety of the agreed-upon Settlement Amount. The total Settlement Amount for the PAGA and  
8 Class claims shall be \$275,000.00, with \$250,000 allocated towards settlement of the Class claims  
9 and \$25,000 allocated towards settlement of the PAGA claims. Payment of the Settlement Amount  
10 by Defendant pursuant to the terms of this Settlement Agreement shall settle and resolve all of the  
11 Released Claims, and will include all payments to the Participating Class Members as well as the  
12 fees and costs of the Claims Administrator, the service payment to the Class Representative, the  
13 fees and costs of Class Counsel, and the payment to the LWDA. The Settlement Trust Account is  
14 to be funded within 10 days following the Effective Settlement Date. Defendant's monetary  
15 obligation under this Settlement Agreement is limited to the Settlement Amount. Defendant may  
16 not be called upon or required to contribute additional monies above the Settlement Amount under  
17 any circumstances whatsoever. All costs and expenses arising out of or in connection with the  
18 performance of this Settlement Agreement shall be paid from the Settlement Amount.

19 46. **No Claim Form Required.**

20 Each Participating Class Members shall be entitled to a share of the Settlement Amount as  
21 set forth in Paragraph 47, below. Participating Class Members shall not be required to complete a  
22 claim form. Class Members shall receive a Notice of Pendency informing them of the terms of the  
23 Settlement Agreement, their right to Opt-Out and/or object, and providing them with an estimate of  
24 their share of the Settlement Amount. Unless a class member elects to Opt-Out of the settlement, a  
25 check representing each Participating Class Member's share of the Settlement Amount will be  
26 mailed to that person pursuant to the terms of this Settlement Agreement.

1           47.     **Calculation of the Participating Class Member Shares.**

2           Each Participating Class Member's shares of the Settlement Amount shall be calculated as  
3 follows:

- 4           a.     Step 1: The Settlement Amount will be deposited into the Settlement Trust Account  
5           as set forth in Paragraph 45, above;
- 6           b.     Step 2: From the Settlement Trust Account, the following shall be deducted:
- 7                 i.     The preliminarily approved fees and costs of the Claims Administrator;
- 8                 ii.    The preliminarily approved payment to the LWDA;
- 9                 iii.   The preliminarily approved service award to the Class Representative;
- 10              iv.   The preliminarily approved attorneys' fees and costs of Class Counsel;
- 11           c.     Step 3: Each Participating Class Member's share of the Settlement Amount will  
12           then be calculated as a percentage, the numerator of which is the number of wage  
13           statements the person received from September 25, 2011, to December 31, 2014  
14           (allocated points for each wage statement), the denominator of which is the total  
15           number of points allocated for all Participating Class Members. Each Participating  
16           Class Member will be allocated 1 point for each wage statement issued from  
17           September 25, 2011, through December 31, 2014. The total number of wage  
18           statements issued and number of wage statements issued to each Participating Class  
19           Member shall be determined using Defendant's records.

20           48.     **Fees and Costs of the Claims Administrator.**

21           As set forth above, and subject to Court approval, the Parties designate Simpluris as the  
22 Claims Administrator to administer the settlement in this action. The Claims Administrator shall  
23 perform the duties required by this Settlement Agreement by, among other things, and without  
24 limitation, receiving and updating through normal and customary procedures the list of Class  
25 Members to be produced by Defendant, so that it is updated prior to the mailing Notice of  
26 Pendency; printing and mailing the Court approved Notice of Pendency; performing necessary



1 additional skip traces on any Notice(s) of Pendency and/or checks returned as undeliverable;  
2 calculating Participating Class Members' shares of the Settlement Amount; preparing and mailing  
3 of settlement checks; establishing a settlement website as described hereafter; responding to  
4 Participating Class Member inquiries as appropriate; preparing any appropriate tax forms in  
5 connection with the settlement payments and remitting those forms and all required payments to  
6 the appropriate governmental agencies; and generally performing all normal and customary duties  
7 associated with the administration of such settlements. All Claims Administrator's fees and costs,  
8 up to \$15,000, will be paid out of the Settlement Trust Account.

9           49.    **Service Payment for Class Representative.**

10           Subject to Court approval, Plaintiff will apply to the Court for a service payment in an  
11 amount not to exceed \$2,750, or 1% of the Settlement Amount, in consideration for her service as  
12 Class Representative. The service payment is in addition to whatever Plaintiff is entitled as a  
13 Participating Class Member. This service payment will be paid out of the Settlement Trust  
14 Account. The Claims Administrator will issue Plaintiff an IRS Form 1099 in connection with this  
15 payment.

16           50.    **Fees and Costs of Class Counsel.**

17           Subject to Court approval, Class Counsel will apply to the Court for an award of attorneys'  
18 fees and costs incurred in connection with the prosecution of this matter, all of the work remaining  
19 to be performed including, but not limited to, documenting the Settlement Agreement, preparing all  
20 of the motions and documents necessary to secure Court approval of the Settlement Agreement  
21 (including all related appellate work), carrying out their duties to see that the Settlement  
22 Agreement is fairly administered and implemented, and obtaining dismissal of the action. Class  
23 Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed  
24 \$90,750.00, or 33% of the Settlement Amount, and declared costs of up to \$7,500. Defendant does  
25 and will not object to such request by Class Counsel. Fees and Costs awarded to Class Counsel by  
26 the Court shall be paid from the Settlement Trust Account. The Claims Administrator shall issue

1 an IRS Form 1099 to Class Counsel in connection with this payment. In the event that a lesser sum  
2 is awarded for the attorneys' fees and costs referenced above, or for the service payment referenced  
3 above, the approval by the Court of any such lesser sum(s) shall not be grounds for Plaintiff and/or  
4 Class Counsel to terminate the Settlement Agreement, but such an order shall be appealable by  
5 them. In the event that such an appeal is filed, final funding and administration of the portion of  
6 the attorneys' fees and/or costs award and/or service payment in dispute will be segregated and  
7 stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate  
8 review, additional amounts are distributable to the Participating Class Members, the cost of  
9 administration of the payments to them will be paid out of such additional amounts and not by  
10 Defendant. Any amount not awarded in attorneys' fees and costs shall be added to the Settlement  
11 Trust Account and distributed to the Participating Class Members in accordance with the terms of  
12 the Settlement Agreement.

13 **51. Payment to the LWDA.**

14 The PAGA allocation of the Settlement Amount shall be \$25,000.00, subject to the Court's  
15 final approval, of which 75% of that amount, or \$18,750.00, minus up to one-third in attorneys'  
16 fees, as approved by the Court (although the total amount of attorneys' fees will not exceed  
17 \$90,750.00, or 33% of the Settlement Amount) will be paid to the LWDA, and the remaining 25%,  
18 or \$6,250.00, will be returned to the Settlement Trust Account for distribution to Participating  
19 Class Members.

20 **52. Procedures for Opt-Out and/or Objection to Settlement Agreement.**

21 The Notice of Pendency mailed to all Class Members will advise each Class Member of the  
22 person's right to Opt-Out of the Settlement Agreement, to object to all or any part of the Settlement  
23 Agreement, and include an estimate of the person's share of the Settlement Trust Account. All  
24 Class Members who wish to Opt-Out of the Settlement Agreement, or to make an objection  
25 thereto, shall be advised that they must submit such Opt-Out or objection in writing to the Claims  
26 Administrator or the Court, respectively, postmarked no later than 30 calendar days from the date

1 of mailing of the Notice of Pendency. The Claims Administrator will email a copy of any Opt-  
2 Outs received to all counsel within 48 hours of its receipt of same. The Notice of Pendency shall  
3 include the specific address for a Class Member to use when mailing an Opt-Out or objection. In  
4 order to effectuate the Class Member's election to Opt-Out, the Opt-Out must contain the Class  
5 Member's full name, current home or mailing address, and the last four digits of the person's social  
6 security number as well as written affirmation of the desire to opt-out containing the following or  
7 substantially similar language:

8 "I elect to opt-out of the *Moser v. O'Connor Woods Housing Corporation* class-  
9 action settlement. I understand that by doing so, I will not be able to participate in  
10 the settlement and will not receive a share of the settlement proceeds."

11 In the event of the election to submit an objection, each objection must reference the Class  
12 Action, contain the full name, current home (or mailing) address, and last four digits of the social  
13 security number of the objecting Class Member, and must state the grounds for the objection. In  
14 order to be considered, each objection must be filed with the Court at the address listed in the  
15 Notice of Pendency and must be mailed, via first class mail with a postmark of not more than 30  
16 calendar days from the date of mailing of the Notice of Pendency. Each objection must also  
17 indicate whether the objecting Class Member desires to appear at the Final Approval Hearing.  
18 Class Counsel and Defendant's counsel shall file any responses to any written objections submitted  
19 to the Court in accordance with this Settlement Agreement at least 5 days before the Final  
20 Approval Hearing.

21 The Parties agree that the Claim, Opt Out, and Objection Deadlines shall not be extended,  
22 and no untimely submissions will be honored under any circumstances, unless mutually agreeable  
23 by the Parties. Notwithstanding the foregoing, a Participating Class Member will be allowed to  
24 extend the Claim, Opt Out, and Objection Deadlines if and only if that person can make a showing  
25 of legal incapacity during the notice period.

1 In the event that more than 15 Class Members submit elections to Opt-Out of the  
2 Settlement Agreement, Defendant shall have the right, in the exercise of its sole discretion, to  
3 rescind, nullify and terminate the Settlement Agreement within 30 calendar days after the  
4 expiration of the Opt-Out period. The Claims Administrator shall notify Class Counsel and  
5 Defendant's counsel via email immediately if the threshold of 15 Opt-Outs is exceeded. If  
6 Defendant exercises this right, it would be without prejudice to its pre-settlement positions and  
7 defenses in the Class Action. However, if Defendant exercises this right, it shall be responsible for  
8 the fees and costs of the Claims Administrator to that point.

9 Except for those Class Members who exclude themselves in compliance with the  
10 procedures set forth above, all Class Members will be bound by the terms and conditions of this  
11 Settlement Agreement, the Order of Final Approval, the Judgment, and the releases set forth herein  
12 and will be deemed to have waived all objections and opposition to the fairness, reasonableness,  
13 and adequacy of the settlement or the terms of this Settlement Agreement.

14 From the date of entry of the Order of Preliminary Approval through the date of the Final  
15 Approval Hearing, Class Members, including the Class Representative, who do not exclude  
16 themselves from the Settlement Agreement shall be prohibited from receiving any monetary  
17 recovery from a complaint or charge of any kind filed with the California Division of Labor  
18 Standards Enforcement or from initiating any lawsuit or other legal proceeding regarding any of  
19 the Released Claims.

20 Subject to the Court's granting an Order of Final Approval, all Class Members who do not  
21 exclude themselves from the Settlement Agreement in compliance with the procedures set forth  
22 above shall be forever barred from filing any other action or proceeding or participating either as a  
23 named plaintiff or as an unnamed class member in any other lawsuit, representative action, or class  
24 action in any state or federal court or administrative tribunal as permitted by law regarding any of  
25 the Released Claims.

1           53.     **Challenges to the Calculation of Participating Class Member Shares.**

2           Participating Class Members may dispute the amount of their shares of the Settlement  
3 Amount and the number of wage statements used to calculate their shares, by timely sending a  
4 written notice to the Claims Administrator regarding the nature of the dispute and providing any  
5 records or documentation supporting their positions. To be considered timely, any dispute  
6 regarding the Participating Class Member's share or the underlying data used to calculate that  
7 person's share must be submitted by the Claims Administrator within 30 calendar days of the date  
8 of mailing of the Notice of Pendency. In response to any timely dispute, Defendant will first verify  
9 the information contained in the Participating Class Member's personnel file and Defendant's  
10 payroll records. Unless the Participating Class Member can establish a different number of wage  
11 statements based on documentary evidence, the total number of wage statements established by  
12 Defendant's records will control. Class Counsel and Defendant's Counsel will then make a good  
13 faith effort to resolve the dispute informally. If counsel for the Parties cannot agree, the dispute  
14 shall be resolved by the Claims Administrator, who shall examine the records provided by  
15 Defendant and the Participating Class Member, and shall be the final arbiter of disputes relating to  
16 a Participating Class Member's share, subject to final review, determination and approval by the  
17 Court. The Claims Administrator's determination regarding any such dispute shall be final for  
18 purposes of administering notice of the settlement, subject to final review, determination and  
19 approval by the Court.

20           54.     **Payment Procedures.**

21           As soon as practicable, the Claims Administrator shall resolve all disputes as to the share  
22 owed to each Participating Class Member and shall pay each Participating Class Member his or her  
23 share of the Settlement Amount. Payment of the Court-approved service payment to the Class  
24 Representative, attorneys' fees and costs to Class Counsel, and payment to the LWDA need not  
25 await distribution of all shares to Participating Class Members, and shall be paid within 21 days  
26 after the Effective Settlement Date.

1           55.     **Tax Treatment of Participating Class Member Shares.**

2           Each Participating Class Member’s share of the Settlement Amount will be allocated 100%  
3 for statutory penalties and interest. Each Participating Class Member who receives any monies  
4 paid in accordance with this Settlement Agreement is responsible for any taxes associated  
5 therewith.

6           As required by state or federal tax requirements, the Claims Administrator will prepare  
7 appropriate IRS Form 1099s for Participating Class Members. The IRS Form 1099 form will  
8 reflect each Participating Class Member’s non-wage income, i.e., the statutory penalties and  
9 interest. The Claims Administrator will be responsible for preparing these forms correctly.  
10 Participating Class Members will be responsible for correctly characterizing the compensation that  
11 they receive pursuant to the IRS Form 1099 and for payment of any taxes owing on said amount.

12           The Parties acknowledge and agree that neither Defendant nor its attorneys have made any  
13 representations regarding the tax consequences of the payment each Participating Class Member’s  
14 share made under this Settlement Agreement. Each Participating Class Member will be required to  
15 pay all federal, state or local taxes, if any, which are required by law to be paid with respect to the  
16 his or her share of the Settlement Amount. The Parties further agree that Defendant shall have no  
17 legal obligation to pay, on behalf of Participating Class Members, any taxes, deficiencies, levies,  
18 assessments, fines, penalties, interest or costs, which may be required to be paid with respect to the  
19 payments under this Settlement Agreement, except as expressly set forth in this herein.

20           56.     **Undistributed Funds.**

21           In the event that any checks mailed to Participating Class Members remain un-cashed or  
22 un-deposited after the expiration of 180 days, or an envelope mailed to a Participating Class  
23 Members is returned and no forwarding address can be located for the Participating Class Members  
24 after reasonable efforts have been made, then any such funds shall be transmitted by the Claims  
25 Administrator pursuant to governing California law to the State of California Unclaimed Property

1 Fund, to be held there in the name of and for the benefit of such class members under California's  
2 escheatment laws.

3 **IV**

4 **NOTICE TO CLASS MEMBERS**

5 **57. Compilation of the Class List.**

6 The Parties agree that, within 10 business days after the Court issues the Order of  
7 Preliminary Approval and approves the Notice of Pendency, Defendant will provide a final Class  
8 List to the Claims Administrator, which list shall include the following most up to date information  
9 about each Class Member in an electronic format: (1) name; (2) last known home address and  
10 telephone number; (3) Social Security Number; (4) number of wage statements issued to each  
11 Class Member.

12 The final Class List will be designated as "Highly Confidential" and shall only be used by  
13 the Claims Administrator for purposes of administering the Settlement Agreement.

14 **58. Notification of the Class Members.**

15 Within 10 business days of its receipt of the Class List, or as directed by the Court in the  
16 Order of Preliminary Approval, the Claims Administrator shall send the Class Members, by first-  
17 class mail, at their last known address or such other address as located by the Claims  
18 Administrator, the Court-approved Notice of Pendency.

19 Within 10 business days of the Court's issuance of the Order of Final Approval, and as  
20 directed by the Court therein, the Claims Administrator shall send the Class Members, by first-  
21 class mail, at their last known address or such other address as located by the Claims  
22 Administrator, the Court-approved Notice of Final Approval.

23 ///

24 ///

25 ///

**RELEASES AND INJUNCTIVE RELIEF**

59. **Release by Participating Class Members.**

Upon issuance of the Order of Final Approval by the Court, each Participating Class Member will release Defendant and the other Releasees from any and all damages, obligations, or liabilities of any kind, including but not limited to, any alleged civil or statutory penalties, accrued interest, and attorneys' fees and costs, based upon the theories and causes of action set forth in the PAGA and class-action causes of action, specifically:

All Participating Class Members fully and finally release Defendant, and its parents, predecessors, successors, subsidiaries, affiliates, and all of their respective employees, directors, officers, agents, attorneys, stockholders, fiduciaries, other service providers, and assigns, from any and all Represented Employees Released Claims. The Represented Employees Released Claims include any and all claims which could be asserted for wage statement violations, including but not limited to Labor Code sections 226, 226.3, 558, 1198, the PAGA (sections 2698, et seq.), and the Wage Orders; and attorneys' fees and costs. This release excludes the release of claims not permitted by law.

The release by the Participating Class Members shall cover the aforementioned claims from September 25, 2011, through the date the Court approves the Notice of Pendency.

60. **LWDA Release.**

Upon issuance of the Order of Final Approval by the Court, each Participating Class Member and the LWDA will release Defendant and the other Releasees from any and all damages, obligations or liabilities of any kind, including but not limited to alleged civil penalties, accrued interest, and attorneys' fees and costs, based upon the facts and theories set forth in the written notice sent to the LWDA and Defendant, namely, any and all failures to furnish accurate itemized wage statements in violation of Labor Code § 226, and the facts and theories supporting the same.





1 reasonable, and in the best interest of the Class Members;

- 2 e. Approval as to the form and content of the proposed Notice of Pendency;
- 3 f. Approval as to the method of notice described in the Settlement Agreement;
- 4 g. Authorization for dissemination of the Notice of Pendency pursuant to the terms
- 5 of the Settlement Agreement;
- 6 h. Preliminary approval of the PAGA allocation in the amount of \$25,000.00, to be
- 7 paid from the Settlement Trust Account;
- 8 i. Preliminary approval of a service payment in the amount of \$2,750, or 1%, for
- 9 Plaintiff, in consideration for his services as Class Representative, to be paid
- 10 from the Settlement Trust Account;
- 11 j. Preliminary approval of fees of Class Counsel in the amount of \$90,750.00, or
- 12 33% of the Settlement Amount, and declared costs of up to \$7,500, to be paid
- 13 from the Settlement Trust Account;
- 14 k. An Order of Preliminary Approval containing a schedule for the implementation
- 15 of the terms of the Settlement Agreement, including deadlines for the mailing
- 16 the Notice of Pendency, the filing of objections and Opt-outs, and the filing of
- 17 papers in connection with the Final Approval Hearing;
- 18 l. An order appointing and approving Simpluris as Claims Administrator, and for
- 19 preliminary approval of fees and costs of administration of up to \$15,000, to be
- 20 paid from the Settlement Trust Account; and
- 21 m. An order setting the Final Approval Hearing for the Court to consider final
- 22 approval of the Settlement Agreement and its terms, including the service
- 23 payment to the Class Representative and the fees and costs of Class Counsel.

24 63. **Following Court Approval of the Settlement Agreement.**

25 Class Counsel shall apply to the Court for the entry of the Order of Final Approval which

26 grants:

27 SMRH:481992465.2

- a. Final approval of the Settlement Agreement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Final approval of the PAGA allocation and payment to the LWDA of its proportionate share thereof;
- c. Final approval of the service payment to the Class Representative;
- d. Final approval of Class Counsel’s application for attorneys’ fees and costs;
- e. An order permanently enjoining and restraining Plaintiff and Participating Class Members from and against initiating or pursuing any claims against Defendant and the Releasees which have been settled herein and released pursuant to the terms of this Settlement Agreement; and
- f. Dismissing this action on the merits, with prejudice and entering Judgment.

No later than 30 calendar days after the Effective Settlement Date, the distribution of all settlement checks referenced herein, and the provision of any un-claimed funds, the Claims Administrator shall serve on the Parties for filing with the Court a final accounting, executed under penalty of perjury, of all monies paid.

64. **Mutual Cooperation.**

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other actions as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein.

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1 **VII**

2 **PARTIES' AUTHORITY**

3 65. The signatories hereto hereby represent that they are fully authorized to enter into  
4 this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

5 **VIII**

6 **NO PRIOR ASSIGNMENTS**

7 66. The Parties hereto represent, covenant, and warrant that they have not, directly or  
8 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any  
9 person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein  
10 released and discharged except as set forth herein.

11 **IX**

12 **CONSTRUCTION**

13 67. The Parties hereto agree that the terms and conditions of this Settlement Agreement  
14 are the result of lengthy, intensive, arm's length negotiations between the Parties. The Parties  
15 further agree that this Settlement Agreement shall not be construed in favor of, or against, any  
16 party by reason of the extent to which any party or his or its counsel participated in the drafting of  
17 this Settlement Agreement.

18 **X**

19 **CAPTIONS AND INTERPRETATIONS**

20 68. Paragraph titles or captions contained herein are inserted as a matter of convenience  
21 and for reference, and in no way define, limit, extend, or describe the scope of this Settlement  
22 Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not  
23 merely a recital.

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1 **XI**

2 **MODIFICATION**

3 69. This Settlement Agreement may not be changed, altered, or modified, except in  
4 writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement  
5 may not be discharged except by performance in accordance with its terms or by a writing signed  
6 by the Parties hereto.

7 **XII**

8 **INTEGRATION CLAUSE**

9 70. This Settlement Agreement contains the entire agreement between the Parties  
10 relating to the settlement of the Class Action and the transaction contemplated hereby, and all prior  
11 or contemporaneous agreements, understandings, representations, and statements, whether oral or  
12 written and whether by a party or such party's legal counsel, are merged herein. No rights  
13 hereunder may be waived except in writing.

14 **XIII**

15 **BINDING ON ASSIGNS**

16 71. This Settlement Agreement shall be binding upon and inure to the benefit of the  
17 Parties hereto and their respective heirs, trustees, executors, administrators, successors, and  
18 assigns.

19 **XIV**

20 **CLASS COUNSEL SIGNATORIES**

21 72. It is agreed that because of the large number of Participating Class Members, it is  
22 impossible or impractical to have each Participating Class Member execute this Settlement  
23 Agreement. As such, Class Counsel is signing on behalf of the Participating Class Members. In  
24 addition, the Notice of Pendency will advise all Class Members of the binding nature of the  
25 Settlement Agreement, their right to opt-out and/or object, and the fact that the Settlement  
26 Agreement shall have the same force and effect as if it were executed individually by each

1 Participating Class Member.

2 **XV**

3 **CONFIDENTIALITY**

4 73. Plaintiff, Defendant, and their respective counsel will maintain the proposed  
5 settlement and this Settlement Agreement as confidential and not publicly disclose the same except  
6 as set forth herein. This shall not apply to or limit the public filing of motions or other case  
7 materials in the Class Action related to seeking and obtaining Court approval of the proposed  
8 Settlement Agreement, the fees and costs of Class Counsel, the service payment to the Class  
9 Representative, and the other relief set forth in this Settlement Agreement, or to communications  
10 between Class Counsel and the Class Members in the Class Action. The Parties understand and  
11 agree that there may be media coverage of the settlement not initiated by Plaintiff or Defendant,  
12 directly or indirectly, as a result of the public filings. Notwithstanding the foregoing, and except as  
13 set forth herein or as otherwise agreed in writing between the Parties, both before and following the  
14 execution of this Settlement Agreement by the Parties and their counsel, Plaintiff, Defendant, and  
15 their respective counsel agree that no party shall issue any press release to the news media or  
16 communicate in any way with news media, concerning the settlement or the Class Action.

17 **XVI**

18 **WEBSITE**

19 74. The Parties agree that the Claims Administrator may use U.S. Mail and an  
20 information-only website to provide notice and information about the settlement to Participating  
21 Class Members. The domain name used for the Claims Administrator's website for the settlement  
22 will be subject to Defendant's reasonable approval. Not later than the date the Claims  
23 Administrator must remit any unclaimed funds to the State of California's unclaimed property fund  
24 pursuant to the terms of the Court-approved settlement, the Claims Administrator's website for the  
25 settlement will be taken down.

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**XVII**

**COUNTERPARTS**

75. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

**XVIII**

**GOVERNING LAW**

76. The Parties agree that California law governs the interpretation and application of this Settlement Agreement.


**XIX**

**CONTINUING JURISDICTION OF THE COURT**

77. The Parties agree that upon the occurrence of the Effective Settlement Date, this Settlement Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure § 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this action over all parties and Class Members to interpret and enforce the terms, considerations and obligations of this Settlement Agreement and all associated documents and filings.

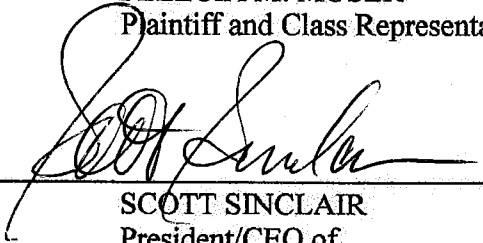
**IT IS SO STIPULATED AND AGREED:**

**DATED:** March 28, 2017



By \_\_\_\_\_  
FELECIA M. MOSER  
Plaintiff and Class Representative

**DATED:** March 31, 2017



By \_\_\_\_\_  
SCOTT SINCLAIR  
President/CEO of  
O'CONNOR WOODS HOUSING  
CORPORATION


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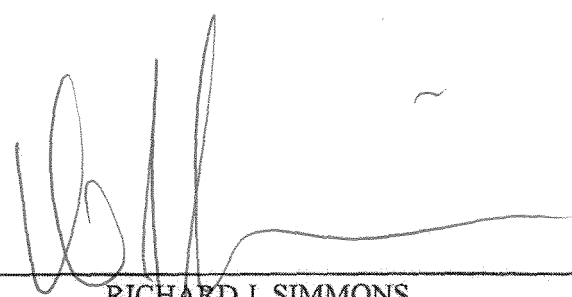
APPROVED AS TO FORM:

DATED: March 29, 2017

MAYALL HURLEY P.C.

By   
NICHOLAS J. SCARDIGLI  
WILLIAM J. GORHAM III  
ROBERT J. WASSERMAN  
Attorneys for Plaintiff  
FELECIA M. MOSER

DATED: <sup>April</sup> March 24, 2017

By   
RICHARD J. SIMMONS  
ERIC M. GRUZEN  
Attorneys for Defendant  
O'CONNOR WOODS HOUSING  
CORPORATION