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ARIAS, OZUNO & GIGNAC, LLP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANN MARIE COSTA, et al.,

Plaintiffs,

vs.

VITAS HEALTHCARE CORPORATION
OF CALIFORNIA,

Defendant.

CASE NO. BC313552

**CLASS ACTION SETTLEMENT
AGREEMENT AND STIPULATION**

1 This Class Action Settlement Agreement and Stipulation (hereinafter the
2 "Agreement") is entered into and effective as of April 17, 2006, by and between the named
3 Plaintiffs in the above-entitled class action, for themselves and on behalf of the Settlement
4 Class and VITAS Healthcare Corporation of California made by the Parties (as defined in Part
5 2.18).

6 1. RECITALS

7 1.1 This Settlement Agreement is entered into with reference to the following facts:

8 1.2 On April 8, 2004, Plaintiffs Ann Marie Costa, Deborah Gill, Anna Jimenez and
9 Gracetta Wilson filed a Complaint against Defendant VITAS Healthcare Corporation of
10 California ("VITAS") in the Superior Court of California for the County of Los Angeles, Case
11 No. BC 313552, seeking to represent a class of all current and former Nurses, Social Workers
12 and Home Health Aides employed by VITAS who worked more than eight (8) hours in any
13 given day during the period April 8, 2000 to the present and who were not paid overtime
14 compensation, or given rest and meal periods pursuant to California Labor Code requirements.

15 1.3 The underlying class action alleges that VITAS unlawfully failed to
16 compensate its Nurses, Social Workers and Home Health Aides for all hours worked,
17 including time spent "off-the-clock" listening to voice mails before starting their shifts and
18 inputting data into the VRU system after completing their shifts, time spent driving to the first
19 appointment and from the last, and failed to provide meal and rest periods in accordance with
20 the applicable California Industrial Welfare Commission ("IWC") Wage Order. Plaintiffs
21 seek recovery of alleged unpaid overtime wages and penalties pursuant to the California Labor
22 Code, the applicable IWC Wage Order, and California Business & Professions Code section
23 17200.

24 1.4 During the two years following the filing of the Complaint, the parties engaged
25 in extensive investigation and written discovery, depositions, legal motions including
26 Plaintiffs' Motion for Class Certification and a multitude of mediation sessions.

27 1.5 On August 11, 2005 counsel for Plaintiffs, representatives from VITAS and
28 VITAS' counsel participated in their first settlement conference before the Hon. John F.

1 Trotter, (Ret.) of JAMS.

2 1.6 On October 13, 2005, counsel for Plaintiffs, and VITAS' counsel participated
3 in a second settlement conference before Judge Trotter (Ret.).

4 1.7 Subsequent to this second settlement conference, counsel for Plaintiffs, VITAS'
5 counsel, and Judge Trotter (Ret.) continued the mediation process through numerous
6 telephonic conversations and conferences.

7 1.8 On January 17, 2006, counsel for Plaintiffs, and VITAS' counsel participated in
8 a third settlement conference before Judge Trotter (Ret.). The case settled during this third
9 settlement conference.

10 1.9 The Settlement Class Representatives believe that the claims asserted in this
11 proceeding have merit and that the evidence developed to date supports their claims.
12 However, the Settlement Class Representatives and Settlement Class Counsel recognize and
13 acknowledge the expense and length of continued proceedings necessary to prosecute the
14 claims through trial and through appeals and through ancillary actions. The Settlement Class
15 Representatives and Settlement Class Counsel also have taken into account the uncertain
16 outcome and the risk of any litigation, especially in multi-party actions such as this
17 proceeding, as well as the difficulties and delays inherent in such litigation. The Settlement
18 Class Representatives and Settlement Class Counsel also are mindful of the inherent problems
19 of proof in establishing, and possible defenses to, the claims asserted in this proceeding. The
20 Settlement Class Representatives and Settlement Class Counsel believe that the settlement set
21 forth in this Agreement confers substantial benefits upon the Settlement Class. Based upon
22 their evaluation, the Settlement Class Representatives and Settlement Class Counsel have
23 determined that the settlement set forth in this Agreement is in the best interest of the
24 Settlement Class.

25 1.10 Defendant believes that the claims asserted do not have merit and deny that it
26 engaged in any activity that is unlawful or otherwise failed to comply with any legal
27 obligation.

28 1.11 The Parties to this Agreement recognize that the claims against the Defendants

1 are strongly disputed, and the Parties wish to settle completely and totally all claims and
2 potential claims against the Defendants and the other Released Parties arising out of this
3 Action.

4 1.12 Now therefore, subject to Court approval, as hereinafter provided, it is hereby
5 agreed by the Parties that, in consideration of the promises and covenants set forth in this
6 Agreement and upon the entry by the Court of a final order approving the settlement and
7 directing the implementation of the terms and conditions of the settlement as set forth in this
8 Agreement, this Action shall be settled and compromised upon the terms and conditions
9 contained herein.

10 **2. DEFINITIONS**

11 These definitions are applicable to this Agreement.

12 2.1 "Action" means the lawsuit captioned *Ann Marie Costa, et al. v. VITAS*
13 *Healthcare Corp. of California.*, Los Angeles County Superior Court Case No. BC313552.

14 2.2 "Claimant" means any Settlement Class Member who seeks a Settlement
15 Payment.

16 2.3 "Claims Administrator" means Desmond, Marcello & Amster at 6060 Center
17 Drive, Suite 825, Los Angeles, California 90045, and any successors designated by the Parties
18 to effectuate the processing and payment of Claims.

19 2.4 "Class" or "Class Members" means all persons who were ever employed by
20 VITAS as Nurses, Social Workers or Home Health Aides during the Class Period.

21 2.5 "Class Period" means April 8, 2000 through the Preliminary Approval Date.

22 2.6 "Class Representative Enhancement" means the sum to be paid to the named
23 Plaintiffs as compensation for their roles as the class representatives, and for the risks and
24 work attendant to that role.

25 2.7 "Court" means the Superior Court of the State of California for the County of
26 Los Angeles.

27 2.8 "Defendant" means VITAS.

28 2.9 "Defendant's Maximum Liability" means VITAS' maximum total liability

1 under the Agreement if all payments are made to the Overtime Class and the Meal Period
2 Class, Plaintiffs' Attorneys' Fees, Plaintiffs' Expenses, and the Class Representative
3 Enhancements.

4 2.10 "Day" means calendar day, unless expressly stated to be otherwise.

5 2.11 "Final Judgment" means the order approving the Settlement and this
6 Agreement, and the final determination of the rights of the Parties in the Action entered
7 pursuant to CALIFORNIA CODE OF CIVIL PROCEDURE section 664.6, as contemplated in Part
8 8.2(d) of this Agreement and attached as Exhibit "D".

9 2.12 "Final Settlement Date" means the date on which the Final Judgment approving
10 this Agreement becomes final. For purposes of this definition, the Final Judgment shall
11 become final:

12 (a) if no objections are asserted at the Final Settlement Hearing, the date the
13 court enters its Final Judgment;

14 (b) if an objection is asserted at the Final Settlement Hearing and if no
15 appeal is taken, on the date on which the time to appeal has expired; or

16 (c) if an objection is asserted at the Final Settlement Hearing and if any
17 appeal is taken, on the date on which all appeals, including petitions for rehearing or
18 reargument, petitions for review and petitions for *certiorari* or any other form of review, have
19 been finally disposed of in a manner resulting in affirmance of all the material provisions of
20 the Final Judgment.

21 2.13 "Final Settlement Hearing" means the hearing to be conducted by the Court to
22 determine whether to enter the Final Judgment.

23 2.14 "Meal Period Sub-Class" means all Class Members employed at VITAS any
24 time between April 8, 2000 and the date of Preliminary Approval who worked one or more
25 shifts longer than 5 hours and did not report that they took a meal period in the VRU system.

26 2.15 "Notice" means the Notice of Class Action Settlement for both the Overtime
27 Sub-Class and Meal Period Sub-Class attached as Exhibit "A."

28 2.16 "Objection/Exclusion Deadline Date" means the date forty-five (45) days from

1 the date the Claims Administrator mails the Notice. It is the date by which Class Members
2 must: (i) file and serve a written statement objecting to the Settlement and a written notice of
3 intention to appear if they object to the Settlement, and (ii) mail a request for exclusion if they
4 wish to be excluded from the Overtime or Rest Period Settlement Class.

5 2.17 "Overtime Class" means all Class Members who worked for VITAS during the
6 Class Period.

7 2.18 "Parties" means Plaintiffs and VITAS.

8 2.19 "Plaintiffs" means Ann Marie Costa, Deborah Gill, Anna Jimenez, and Gracetta
9 Wilson, individually and in their capacity as parties seeking to act as the class representatives.

10 2.20 "Plaintiffs' Attorneys" means Mike Arias and the law firm of Arias, Ozzello &
11 Gignac, LLP.

12 2.21 "Plaintiffs' Attorney Fees" means the amount awarded to the attorneys for
13 Plaintiffs by the Court for prosecuting the Action and payable separate and apart from the
14 Settlement Fund, thereby not effecting the amount any member of any Sub-Class shall
15 receive.

16 2.22 "Plaintiffs' Attorneys' Released Claims" means the claims released by
17 Plaintiffs' Attorneys in Part 7.5 of this Agreement.

18 2.23 "Plaintiffs' Expenses" means those reasonable expenses of litigation and
19 negotiating and overseeing the Settlement incurred by Plaintiffs and Plaintiffs' Attorneys and
20 approved for reimbursement by the Court, including the costs of the Claims Administrator.

21 2.24 "Plaintiffs' Released Claims" means the claims released by Plaintiffs in Part 7
22 of this Agreement.

23 2.25 "Preliminary Approval Date" means the date of entry of the Court's order
24 granting preliminary approval of the Settlement according to the terms established in Part 8.1
25 of this Agreement.

26 2.26 "Released Parties" means VITAS; Chemed Corporation ("Chemed"); their past,
27 present and future parent companies (including intermediate parents and ultimate parents) and
28 subsidiaries, affiliates, predecessors, successors and assigns, and each of their respective past,

1 present and future officers, directors, employees, agents, attorneys, insurers, stockholders,
2 representatives, heirs, administrators, executors, successors and assigns, and any other person
3 or entity acting on their behalf.

4 2.27 "Settlement" means the complete settlement and conclusion of this litigation
5 and all related claims effectuated by this Agreement.

6 2.28 "Settlement Class" or "Settlement Class Member" means with respect to the
7 Overtime Sub-Class those Overtime Sub-Class Members who have not properly and timely
8 submitted a request for exclusion as required by Part 10. "Settlement Class" or "Settlement
9 Class Member" means with respect to the Meal Period Sub-Class those Meal Period Sub-
10 Class Members who have not properly and timely submitted a request for exclusion as
11 required by Part 10.

12 2.29 "Settlement Class Released Claims" means with respect to both the Overtime
13 Sub-Class and the Meal Period Sub-Class the claims released by the Settlement Class
14 Members in Part 7 of this Agreement and in the Notice attached as Exhibit "B".

15 2.30 "Settlement Fund" means the Fifteen Million Dollars and Zero Cents
16 (\$15,000,000.00) that shall be paid to the Settlement Class.

17 2.31 "Settlement Payments" means the amounts to be paid to individual Settlement
18 Class Members.

19 2.32 "VITAS" means VITAS Healthcare Corporation of California.

20 3. SETTLEMENT PURPOSES ONLY

21 3.1 **Settlement Class Only.** Any certification of a preliminary or final Settlement
22 Class pursuant to the terms of this Agreement shall not constitute, shall not be construed as,
23 and shall not be admissible in any proceeding as an admission on the part of the Defendants or
24 any other Person that this or any other action is appropriate for class treatment at trial.
25 Counsel for the Parties shall not refer to this Agreement or make any argument concerning
26 this Agreement in any contested proceeding to certify a litigated class.

27 3.2 **Admissibility.** This Agreement, any negotiations or proceedings related
28 hereto, the implementation hereof, and any papers submitted in support of the motions for

1 approval hereof (collectively, the "Settlement Proceedings") shall not be construed as, or
2 deemed to be evidence of, any admission or concession by any of the Parties or any other
3 Person regarding liability or the appropriateness of class treatment, and shall not be offered or
4 received in evidence in any action or proceeding for any purpose whatsoever; provided,
5 however, that this Agreement and the Settlement Proceedings may be presented to the Court
6 in connection with the implementation or enforcement of this Agreement, or as may be
7 necessary or appropriate to further the purposes sought to be achieved by this Agreement.

8 **3.3 Denial Of Liability.** VITAS denies that it has engaged in any unlawful
9 activity, has failed to comply with the law in any respect, or has any liability to anyone under
10 the claims asserted in the action. The Parties expressly acknowledge that this Agreement is
11 entered into for the purpose of compromise of highly disputed claims and that nothing herein
12 is an admission of liability or wrongdoing by VITAS. Neither the Agreement nor any
13 document prepared in connection with the Settlement may be admitted in any proceeding as
14 an admission by VITAS, Plaintiffs, or any person within the definition of the Class. However,
15 this paragraph and all other provisions of this Agreement notwithstanding, any and all
16 provisions of this Agreement may only be admitted in evidence and otherwise used in any and
17 all proceedings to enforce any or all terms of this Agreement, or in defense of any claims
18 released or barred by this Agreement.

19 **4. JURISDICTION**

20 **4.1 Continuing Jurisdiction.** Pursuant to CALIFORNIA CODE OF CIVIL PROCEDURE
21 § 664.6 and CALIFORNIA RULES OF COURT, RULE 1859 the Court has, and shall continue to
22 have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and
23 enforce the terms of this Agreement.

24 **5. SETTLEMENT TERMS**

25 **5.1 General.** This Agreement is for settlement purposes only. The Settlement
26 described herein will resolve fully and finally all purported claims of the Settlement Class
27 Members for non-payment of overtime compensation, and failure to provide meal periods
28 under state or federal law arising at any time on or before the Preliminary Approval Date and

1 that were or could have been asserted in the Action.

2 5.2 **The Settlement Subclasses.** The Parties stipulate and agree that the Class shall
3 consist of two separate Sub-Classes: The Overtime Sub-Class and the Meal Period Sub-Class.
4 A Class Member may be a member of both the Overtime Sub-Class and Meal Period Sub-
5 Class, or just one of these Sub-Classes.

6 5.3 **Defendant's Total Liability.** It is understood and agreed that VITAS' total
7 liability under the Agreement if all payments are made to the Overtime Sub-Class and the
8 Meal Period Sub-Class is fifteen million dollars and zero cents (\$15,000,000.00). It is
9 understood and agreed that VITAS' total liability for Plaintiffs' Attorneys' Fees, Plaintiffs'
10 Expenses, Class Representatives' Enhancements and the Claims Administrator's Fees and
11 Costs is four million dollars and zero cents (\$4,000,000.00).

12 **6. SETTLEMENT CONSIDERATION**

13 6.1 **Overtime Sub-Class.** This Settlement provides for a process by which VITAS
14 will make cash Settlement Payments of unpaid overtime and interest directly to Overtime Sub-
15 Class Members who do not opt out of the Settlement in an amount not to exceed seven million
16 five hundred thousand dollars and zero cents (\$7,500,000.00). Of this amount, five million
17 nine hundred eighty eight thousand four hundred forty five dollars and seventy-three cents
18 (\$5,988,445.73) shall constitute wages and one million five hundred eleven thousand five
19 hundred fifty four dollars and twenty-seven cents (\$1,511,554.27) shall constitute interest.
20 These payments will be allocated among the Overtime Class Members in the manner set forth
21 in Part 11.4.

22 6.2 **Meal Period Sub-Class.** This Settlement also provides for a process requiring
23 VITAS to make cash Settlement Payments to Meal Period Sub-Class Members who do not opt
24 out of the Settlement in an amount not to exceed seven million five hundred thousand dollars
25 and zero cents (\$7,500,000.00) in total. These payments will be allocated among the Meal
26 Period Sub-Class Members in the manner set forth in Part 11.5.

27 6.3 **Additional Payments.** After the Parties reached an agreement as to the
28 amount of the Settlement Fund payable to the Settlement Class, with the help of the Hon. John

1 F. Trotter (Ret.), the Parties further agreed, subject to court approval, to pay four million
2 dollars and zero cents (\$4,000,000.00) for Plaintiff's attorney's fees, costs, class
3 representative enhancements, and claims administration fees. This amount was negotiated and
4 agreed to only after the parties reached agreement on the amount to be paid into Settlement
5 Fund. Therefore this additional payment shall not reduce the amount any Settlement Class
6 member will receive.

7 **6.4 Funding Settlement Fund Account.** Within five (5) business days of the
8 Preliminary Approval Date, VITAS shall deposit by wire transfer fifteen million dollars
9 (\$15,000,000.00) into the VITAS Settlement Fund Joint Account and at First Regional Bank,
10 for the benefit of the Class as full and final settlement of all Class Members' claims. The
11 signatories on this account shall be Mike Arias, Esq. and Reed E. Schaper, Esq.

12 **6.5 Payments of Accrued Interest.** Any and all interest accrued by the Settlement
13 Fund Account shall be paid to the members of the Overtime Sub-Class on a pro rata basis.

14 **7. RELEASE OF CLAIMS.**

15 **7.1 Final Approval Order.** The Final Approval Order shall include a release by
16 the Settlement Class of the Defendants, the Defendants' Insurers, and the other Released
17 Parties from any and all Settled Claims.

18 **7.2 Release Of Defendants.** Except for the obligations and rights created by this
19 Agreement, the Settlement Class hereby releases and absolutely and forever discharge
20 Defendants, the other Released Parties, and all other Persons of and from any and all Settled
21 Claims.

22 **7.3 CIVIL CODE section 1542.** To the fullest extent permitted by law, the
23 Releasing Parties waive and relinquish any and all rights or benefits they have or may have
24 under CALIFORNIA CIVIL CODE section 1542, or any comparable provision of state or federal
25 law, with regard to the Released Claims. CALIFORNIA CIVIL CODE section 1542 provides:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
28 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER

1 MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR.

3 The Releasing Parties acknowledge that they are aware that they or their attorneys may
4 hereafter discover claims or facts in addition to or different from those now known or believed
5 to be true with respect to the subject matter of this Agreement and/or the Settled Claims. The
6 Releasing Parties acknowledge that they intend to and will fully, finally, and forever settle and
7 release any and all Settled Claims described herein, whether known or unknown, suspected or
8 unsuspected, which now exist, hereinafter may exist, or heretofore may have existed. In
9 furtherance of this intention, the releases contained in this Agreement shall be and remain in
10 effect as full and complete releases of the Settled Claims by the Releasing Parties without
11 regard to the subsequent discovery or existence of such different or additional claims or facts.

12 **7.4 Release of Claims and Notice.** A Release of Claims consistent with Part 7.3
13 shall be included in the Notice, attached hereto as Exhibit "A", and as approved by the Court.
14 Each Settlement Class Member in the Overtime Sub-Class and the Meal Period Sub-Class
15 who does not timely opt out, shall be bound by this Release of Claims.

16 **7.5 Release of Attorneys' Claims.** Except for the obligations expressly provided
17 for in this Agreement, Plaintiffs' Attorneys fully and finally release, as of the Final Settlement
18 Date, the Released Parties from any and all claims in favor of Plaintiffs' Attorneys arising
19 from the Action, including by way of example only, any and all claims for attorneys' fees,
20 costs, consultant's fees, expert witness fees, interest, or any other expenses incurred by
21 Plaintiffs or Plaintiffs' Attorneys in connection with or related in any matter to the Action, the
22 Settlement of the Action or the administration of the Settlement.

23 **8. APPROVAL OF SETTLEMENT**

24 **8.1** On or before April 17, 2006, the Parties shall jointly file this Agreement
25 including all attached exhibits. Plaintiffs shall file a Motion for Preliminary Approval and
26 supporting papers with the Court, requesting that the Court enter a proposed Preliminary
27 Approval Order in the form attached as Exhibit "B" establishing a procedure for obtaining
28 final approval of the Settlement. Any dispute regarding forms of notices and other documents

1 necessary to implement the Settlement contained in the Agreement, if not timely resolved
2 among the Parties, shall be referred to the Court. The Court has set a hearing date of April 21,
3 2006 to hear the Motion for Preliminary Approval of this Settlement.

4 8.2 A Final Settlement Hearing to determine final approval of the Settlement shall
5 be scheduled as soon as practicable, subject to the calendar of the Court. Upon final approval
6 of the Settlement by the Court at or after the Final Settlement Hearing, the Parties shall seek
7 and obtain from the Court a Final Judgment in the form attached hereto as Exhibit "C". The
8 Final Judgment shall comply with CALIFORNIA CODE OF CIVIL PROCEDURE section 664.6 in all
9 respects and shall among other things:

10 (a) find that the Court has personal jurisdiction over all Class Members and
11 that the Court has subject matter jurisdiction to approve this Agreement and all exhibits
12 thereto;

13 (b) approve this Agreement and the proposed Settlement as fair, reasonable
14 and adequate, consistent and in compliance with all applicable requirements of the
15 CALIFORNIA CODE OF CIVIL PROCEDURE, the California and United States Constitutions
16 (including the Due Process Clause), the California Rules of Court and any other applicable
17 law, and in the best interests of each of the Parties and the Class Members; direct the Parties
18 and their counsel to implement and to consummate this Agreement according to its terms and
19 provisions; and declare this Agreement to be binding on Plaintiffs and all other Class
20 Members, except those who timely and properly filed requests for exclusion, as well as their
21 heirs, executors and administrators, successors and assigns;

22 (c) finally certify the Class for settlement purposes only and find that an
23 ascertainable class exists and a well defined community of interest exists in the questions of
24 law and fact involved because (i) there are questions of law and fact common to the Class
25 Members which, as to the Settlement Agreement and all related matters, predominate over any
26 individual questions; (ii) the Claims of the Plaintiffs are typical of the Claims of the Class
27 Members; and (iii) in negotiating, entering into and implementing the Settlement, Plaintiffs
28 and Plaintiffs' Counsel have fairly and adequately represented and protected the interests of

1 all of the Class Members.

2 (d) find that the Notice and the notice methodology implemented pursuant
3 to this Agreement (i) constituted the best practicable notice; (ii) constituted notice that was
4 reasonably calculated, under the circumstances, to apprise Class Members of the pendency of
5 the Action, their right to object to or exclude themselves from the proposed Settlement and
6 their right to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due,
7 adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all
8 applicable requirements of the CALIFORNIA CODE OF CIVIL PROCEDURE, the California and
9 United States Constitutions (including the Due Process Clause), the California Rules of Court
10 and any other applicable law;

11 (e) find that Plaintiffs and Plaintiffs' Attorneys adequately represented the
12 Class for purposes of entering into and implementing the settlement;

13 (f) dismiss the Action (including all individual claims and Class claims
14 presented thereby) on the merits and with prejudice, without fees or costs to any Party except
15 as provided in this Agreement;

16 (g) incorporate the Release of Claims set forth above in Part 7 of this
17 Agreement, make the Release of Claims effective as of the date of the Preliminary Approval
18 Date, and forever discharge the Released Parties from any claims or liabilities arising from or
19 related to this Action;

20 (h) permanently bar and enjoin Plaintiffs and all Class Members who have
21 not been timely and properly excluded from the Class and any person acting on their behalf
22 from (i) filing, commencing, prosecuting, intervening in, participating in (as class members or
23 otherwise), or receiving any benefits or other relief from, any other lawsuit, in any state or
24 federal court, arbitration, or administrative, regulatory or other proceeding or order in any
25 jurisdiction based on or relating to the claims and causes of action, or the facts and
26 circumstances relating thereto, in this Action; and (ii) organizing such non-excluded Class
27 Members into a separate class for purposes of pursuing as a purported class action (including
28 by seeking to amend a pending complaint to include class allegations, or by seeking class

1 certification in a pending action) any lawsuit based on or relating to the claims and causes of
 2 action, or the facts and circumstances relating thereto, in this Action;

3 (i) without affecting the finality of the Final Judgment the Court shall
 4 retain continuing jurisdiction over the Action and the Parties and Class, and the administration
 5 and enforcement of the Settlement. Any disputes or controversies arising with respect to the
 6 interpretation, consummation, enforcement, or implementation of the Settlement shall be
 7 presented by motion to the Court; *provided however*, that nothing in this Part shall restrict the
 8 ability of the Parties to exercise their rights under Parts 8.2(a) through 8.2(i), above; and

9 (j) After entry of the Final Judgment, the Court shall have continuing
 10 jurisdiction over the Action solely for purposes of (i) enforcing this Settlement Agreement, (ii)
 11 addressing settlement administration matters, and (iii) addressing such post-Final Judgment
 12 matters as may be appropriate under court rules or applicable law.

13 **8.3** Should the Court decline to approve this Agreement or fail to enter the Final
 14 Judgment in the form of Exhibit "C", the Agreement shall be voidable by VITAS or Plaintiffs,
 15 by written notice to the attorneys of record for the other party served in a manner authorized
 16 by CALIFORNIA CODE OF CIVIL PROCEDURE section 1013, no later than fifteen (15) days after
 17 entry of any such order. If VITAS voids this Agreement, VITAS shall have no obligations to
 18 make any payments under this Agreement, except that VITAS shall pay any and all reasonable
 19 fees and expenses of the Claims Administrator prior to the date the agreement is voided. This
 20 right to void the Agreement does not apply to any modifications made by the Court to an
 21 award of Plaintiffs' Attorneys' Fees applied for by Plaintiffs' Attorneys, provided such award
 22 does not exceed the amount set forth in Part 12.

23 **9. NOTICE TO CLASS MEMBERS**

24 **9.1** The Settlement Class Notice for the Overtime Sub-Class and Meal Period Sub-
 25 Class in the form attached hereto as Exhibit "A", and as approved by the Court, shall be
 26 provided to the Overtime Sub-Class and Meal Period Sub-Class using the procedures in this
 27 Part 9.

28 **9.2** Within five (5) business days after the Preliminary Approval Date, VITAS shall

1 provide to the Claims Administrator in electronic database format the names, most current
2 mailing addresses, employee identification numbers and the Social Security numbers for the
3 Overtime Sub-Class and Meal Period Sub-Class from VITAS' records. This information shall
4 remain confidential and shall not be disclosed to anyone, except applicable taxing authorities
5 and within the Claims Administrator to carry out the reasonable efforts described in this Part
6 11, or pursuant to express written authorization by VITAS or by order of the Court.

7 9.3 Within ten (10) business days of receipt of the mailing address information, the
8 Claims Administrator shall mail the Notice via first-class regular U.S. Mail to all identified
9 Class Members of the Overtime Sub-Class and Meal Period Sub-Class, respectively.

10 9.4 Defendant shall make reasonable efforts to provide Plaintiffs' counsel with the
11 last known names and addresses for each Class Member. Said information will be provided in
12 a reasonably accessible format (such as Excel or Access) that may include, without limitation,
13 mailing label format. Prior to mailing said notice, the Claims Administrator shall utilize the
14 services of National Change of Address (NCOA) to correct any addresses as necessary. For
15 any notice returned for the first time with a new address provided by the postal service, the
16 Claims Administrator shall utilize the new address and mail the notice a second time. For any
17 notice returned for the first time by the postal service without a new address provided by the
18 postal service, the Claims Administrator shall skip trace to obtain a current address for the
19 Class Member in question and shall mail the notice a second time within five (5) days of
20 receiving the notice of invalid address. The Claims Administrator shall thereafter have no
21 further obligation to seek a current address.

22 9.5 For those Class Members who cannot be located through the process described
23 above, if any, any Settlement Payments allocated to such Class Members shall be applied
24 toward the cost of a private investigator in a final effort to locate such Class Members. Such
25 costs may be deducted from the amount that that Class Member shall receive.

26 10. OBJECTION AND EXCLUSION PROCEDURES

27 10.1 The Notice shall provide that the Class Members who wish to object to the
28 Settlement must file with the Court and serve on counsel for the Parties a written statement

1 objecting to the Settlement and a written notice of intention to appear at the Final Settlement
2 Hearing and object. Such written statement and notice must be filed with the Court and served
3 on counsel for the Parties by the Objection/Exclusion Deadline Date. Class Members who fail
4 to file and serve timely written objections and notice of intention to appear and object in the
5 manner specified above shall be deemed to have waived any objections and shall be foreclosed
6 from making any objection (whether by appeal or otherwise) to the Settlement.

7 **10.2** The Notice shall also provide that the Class Members who wish to exclude
8 themselves from the Settlement Class must submit to the Claims Administrator a written
9 statement requesting exclusion. The request for exclusion must contain, at a minimum, the
10 Settlement Class member's name, address, home telephone number, cell phone number (if any)
11 and e-mail address (if any). Such requests for exclusion must be sent by regular mail to the
12 Claims Administrator and must be postmarked on or before the Objection/Exclusion Deadline
13 Date. Any request for exclusion postmarked after the Objection/Exclusion Deadline Date shall
14 be of no force and effect. Class Members who fail to mail a valid and timely request for
15 exclusion on or before the Objection/Exclusion Deadline Date shall be deemed a Settlement
16 Class Member and bound by all terms of the Settlement and any Final Judgment entered in the
17 Action if the Settlement is approved by the Court, regardless of whether they have objected to
18 the Settlement. Any Class Member who timely submits a request for exclusion will not receive
19 a Settlement Payment.

20 **10.3** If more than five percent (5%) of the persons in the Class file timely requests
21 for exclusion, VITAS shall have the sole option to declare this Agreement null and void by
22 giving written notice to counsel for the Class Plaintiffs no later than 10 days following the last
23 day of the Objection/Exclusion Deadline Date. The written notice must be served in a manner
24 provided for by CALIFORNIA CODE OF CIVIL PROCEDURE section 1013. Before exercising its
25 right to declare this Agreement null and void under this paragraph, however, VITAS, through
26 its counsel, shall cooperate with Plaintiffs and Plaintiffs' counsel in the investigation of the
27 opt-outs, including without limitation permitting such opt-outs to confer with the Court.
28 Without further order of the Court, the Parties may agree in writing to extend the time within

1 which VITAS may declare this Agreement null and void an additional forty-five (45) days to
2 permit further analysis of the opt-outs.

3 **10.4** The Parties' counsel shall receive a copy of all valid and timely requests for
4 exclusion from the Claims Administrator within seven (7) days of the Claims Administrator's
5 receipt. No later than fourteen (14) days before the Final Settlement Hearing the Claims
6 Administrator shall provide the Parties with a complete and accurate list of all Class Members
7 who have timely requested exclusion from the Settlement Class. No later than fourteen (14)
8 days before the Final Settlement Hearing the Plaintiffs' Attorneys shall serve on VITAS and
9 file with the Court all written objections to the Settlement and/or notices of intention to appear
10 and object.

11 **10.5** The Parties agree that neither they nor their counsel will solicit or otherwise
12 encourage directly or indirectly any Class Member to request exclusion from the Settlement
13 Class, object to the Settlement, or appeal from the Court's Final Judgment.

14 **11. CLAIMS ADMINISTRATION AND PAYMENT OF CLAIMS**

15 **11.1** Subject to Court approval, the parties agree that Desmond, Marcello & Amster
16 shall be the Claims Administrator. The Claims Administrator shall be paid by the Class
17 Plaintiffs from the Attorney Fee and Expense Fund account for services rendered pursuant to
18 this Agreement. The Claims Administrator shall have the authority to create and administer
19 the Claims Fund, to process claims against the Claims Fund, and to disburse sums from the
20 Claims Fund. The Claims Administrator shall carry out its duties in strict accordance with the
21 procedures set forth in this Agreement. The Claims Administrator shall submit monthly
22 invoices to the Plaintiffs' counsel for approval and payment. With good cause, any Party
23 through its counsel may individually move the Court to replace the Claims Administrator or
24 the Court may on its own motion replace the Claims Administrator at any time with or without
25 cause.

26 **11.2** The Notice shall be pre-printed with the specific amount of the overtime
27 payment to be made to the Overtime Sub-Class Member, as well as the formula for
28 determining the interest payment, as set forth in Part 11.4. Overtime Sub-Class Members are

1 not required to submit a proof of claim form as a condition of receiving an overtime
2 Settlement Payment. Instead, Overtime Sub-Class Members will automatically be paid the
3 amount specified in the Overtime Sub-Class Notice unless they timely opt out of the
4 Settlement.

5 **11.3** The Notice shall also be pre-printed with the specific amount of the meal period
6 payment to be made to that Meal Period Sub-Class Member, as set forth in Part 11.5. Meal
7 Period Sub-Class Members are not required to submit a proof of claim form as a condition of
8 receiving a meal period Settlement Payment. Instead, Meal Period Sub-Class Members will
9 automatically be paid the amount specified in the Notice unless they timely opt out of the
10 Settlement.

11 **11.4** In consideration for the Settlement and release of the Settlement Class Released
12 Claims, VITAS shall pay, or cause to be paid, to each Overtime Sub-Class Member, cash
13 compensation according to the schedule generated by the Claims Administrator, less
14 applicable mandated employee payroll taxes per Part 11.7. The cash payments for overtime
15 and interest will be increased on a pro rata basis for each Overtime Sub-Class Member who
16 opts out of the Settlement. The allocation of funds to the Overtime Sub-Class shall be as
17 follows: five million nine hundred eighty eight thousand four hundred forty five dollars and
18 seventy-three cents (\$5,988,445.73) shall constitute wages and one million five hundred
19 eleven thousand five hundred fifty four dollars and twenty-seven cents (\$1,511,554.32) shall
20 constitute interest. In no event, shall the amount of the cash Settlement Payments to the
21 Overtime Settlement Sub-Class exceed seven million five hundred dollars and zero cents
22 (\$7,500,000.00).

23 **11.5** In consideration for the Settlement and release of the Settlement Class Released
24 Claims, VITAS shall pay, or cause to be paid, to each Meal Period Sub-Class Member a cash
25 payment per each qualified shift worked, where that meal period was not reported in the VRU
26 system. The cash payment per meal period not reported in the VRU system will be
27 determined by adding the total number of meal periods not reported in the VRU system, and
28 dividing this figure into the seven million five hundred thousand dollars and zero cents

1 (\$7,500,000.00) amount allocated to the Meal Period Sub-Class. The pro rata cash payment
2 per meal period not reported in the VRU system will be increased on a pro rata basis for each
3 Meal Period Sub-Class Member who opts out of the Settlement. For the purposes of this
4 Agreement, the statute of limitations for the failure to provide meal periods under CAL. LAB.
5 CODE section 226.7 shall be considered four years, and claims shall extend back to April 8,
6 2000. Shifts that were not actually worked, but which appear in VRU time records as paid
7 time off (e.g., vacation days or holidays not worked) will not be counted. In no event, shall
8 the amount of the cash Settlement Payments to the Meal Period Sub-Class exceed seven
9 million five hundred thousand dollars and zero cents (\$7,500,000.00).

10 **11.6** Immediately prior to the commencement of the Notice program, the Claims
11 Administrator shall establish a website capable of providing generalized information,
12 including this Agreement, the identity of the settlement Class Counsel, the Notice, and the
13 Preliminary Approval Order. The website shall be maintained and the costs shall be paid from
14 the Attorneys' Fees and Expense Fund. The Claims Administrator shall also establish a non-
15 toll free telephone number capable of providing a recording of generalized information. The
16 telephone number shall be maintained and the costs shall be paid from the Attorneys' Fees and
17 Expense Fund. VITAS shall be given a reasonable opportunity to review and comment on the
18 content of this site

19 **11.7** The Claims Administrator shall regularly and accurately report to the Parties'
20 Counsel, in written form when requested, the substance of the work performed, including the
21 amounts paid to Settlement Class Members.

22 **11.8** All Settlement Payments paid to satisfy overtime claims shall be subject to the
23 withholding of all applicable local, state and federal income and employment taxes. The
24 amount of federal income tax withholding will be based upon a flat withholding rate of
25 twenty-eight percent (28%) (Treas. Reg. § 31.3402(g)-1(a)(2)) and income tax withholding
26 with respect to California will be based upon a flat withholding rate of six percent (6%) (CAL.
27 REV. TAX'N CODE § 18663(b)), in addition to any other applicable federal, state or local
28 employment or other taxes. A W-2 form will be issued for this payment. The Parties,

1 however, agree that no taxes will be withheld and paid with respect to: (i) the payments
2 designated as consideration for settling claims for interest, meal period penalties or other
3 Labor Code penalties; (ii) the Class Representatives' Enhancements; (iii) Plaintiffs'
4 Attorneys' Fees; and (iv) Plaintiffs' Expenses. Any taxes due on any portion of the
5 Settlement Payment not allocated to overtime shall be the responsibility of the individual
6 Settlement Class Members, who shall defend and indemnify VITAS for any liability it incurs
7 to any taxing authority on account of a Settlement Class Member's failure to pay all taxes due
8 on such payments. A Form 1099 will be issued for any such payment exceeding \$600. Any
9 taxes due on the Class Representatives' Enhancements shall be the responsibility of Plaintiffs,
10 and any taxes due on Plaintiffs' Attorneys' Fees and Plaintiffs' Expenses shall be the
11 responsibility of Plaintiffs' Attorneys. Plaintiffs and Plaintiffs' Attorneys shall defend and
12 indemnify VITAS for any liability it incurs to any taxing authority on account of Plaintiffs or
13 Plaintiffs' Attorney's failure to pay all taxes due on such payments. VITAS agrees to pay the
14 employer's share of any and all payroll taxes due on the Settlement Payments allocated to
15 overtime claims. The Parties acknowledge and agree that proper information reporting will be
16 made to the appropriate taxing authorities regarding all payments made pursuant to this
17 Agreement.

18 **11.9 No effect on employee benefits.** The Parties acknowledge and agree that
19 VITAS will not use the Settlement Payments to calculate any additional benefits including, by
20 example but not limitation, vacation, holiday pay or 401(k) plan contributions. The
21 Settlement Payments will not represent any modification of previously credited hours of
22 service or other eligibility criteria under any employee pension or employee welfare benefit
23 plan sponsored by VITAS. VITAS and the Settlement Class will not consider the Settlement
24 Payments "compensation" for purposes of determining eligibility for, or benefit accrual
25 within, an employee pension benefit plan or employee welfare benefit or other plan sponsored
26 by VITAS or its predecessors, subsidiaries or successors. Receipt of Settlement Payments
27 will not create any new or additional entitlement to any benefit for any Settlement Class
28 Member.

1 11.10 The Settlement Payments shall be made to each Settlement Class Member
2 within fifteen (15) business days after the Final Settlement Date.

3 **12. ATTORNEYS' FEES, PLAINTIFF'S EXPENSES AND CLASS**
4 **REPRESENTATIVES PAYMENTS**

5 12.1 VITAS agrees that Plaintiffs' Attorneys are entitled to an award of reasonable
6 attorneys' fees and costs. VITAS also acknowledges that the Class possesses a potential claim
7 for reasonable attorneys' fees and costs pursuant to, *inter alia*, the California Labor Code.
8 The Parties agree that the limits of any and all such claims for reasonable attorneys' fees and
9 costs have been settled in this Agreement. The Plaintiffs' Attorneys' Fees are to compensate
10 Plaintiffs' Counsel for all the work already performed in this Action, and all the remaining
11 work to be performed in documenting the Settlement, securing Court approval of the
12 Settlement, making sure the Settlement is fairly administered and implemented, and obtaining
13 the Final Judgment.

14 12.2 The Plaintiffs' Attorneys shall pay, from the Attorney's Fees and Expense
15 Fund, the cost and expenses incurred by the Claims Administrator in giving notice to the Class
16 by mail, and shall also pay the Claims Administrator's costs, fees and expenses for the claims
17 administration and reporting process.

18 12.3 VITAS understands that Plaintiffs' Attorneys will apply to the Court for an
19 award of reasonable attorneys' fees, costs and expenses, which will be scheduled for
20 determination at the Final Settlement Hearing. VITAS has agreed to pay Plaintiff's
21 reasonable attorneys' fees which it agrees to be three million seven hundred and fifty thousand
22 dollars and zero cents (\$3,750,000.00). VITAS also has agreed to pay reimbursement of costs
23 and expenses in an amount up to and including two hundred fifty thousand dollars and zero
24 cents (\$250,000.00). Plaintiffs and the Settlement Class shall not seek payment of attorneys'
25 fees or reimbursement of costs or expenses from VITAS except as set forth herein.

26 12.4 **Funding of Attorneys' Fee and Expense Fund Account.** Within five (5)
27 business days of the final approval of the Settlement by the Court, Preliminary Approval Date,
28 VITAS shall deposit by wire transfer a maximum of four million dollars (\$4,000,000.00) into

1 the VITAS Attorneys' Fees and Expense Fund Account and at First Regional Bank, for the
 2 payment of Attorney Fees, Costs, Incentive Payments and Claims Administration fees and
 3 expenses. However, VITAS will pay costs of claims administration as such costs become due.
 4 Plaintiffs' Attorneys and VITAS agree that any amount of the two hundred and fifty thousand
 5 dollars and zero cents (\$250,000.00) allocated solely for the reimbursement of costs or
 6 expenses which is unused, shall be returned to VITAS and used towards the payment of
 7 VITAS' employer contributions incurred as a result of this Agreement.

8 **13. GOVERNMENT ACTIONS AFFECTING SETTLEMENT**

9 **13.1** If any administrative proceeding or action is commenced on or before a date
 10 that is two years from the Preliminary Approval Date by any federal, state or local
 11 government authority, including without limitation the U.S. Department of Labor or the
 12 California Division of Labor Standards Enforcement, in a *parens patriae* or other function
 13 asserting claims within the scope of the Action, the Plaintiffs and Plaintiffs' Attorneys shall
 14 intervene in that action at the request of VITAS. They shall intervene to fully support VITAS
 15 by asserting that the governmental action is within the scope of this Agreement, the Complaint
 16 and the Final Judgment. Any time and expense incurred by the Plaintiffs and Plaintiffs'
 17 Attorneys' shall be deemed to be within the application(s) referenced in Part 12.

18 **14. NOTICES**

19 **14.1** Unless otherwise specifically provided herein, all notices, demands or other
 20 communications given hereunder shall be in writing and shall be deemed to have been duly
 21 given as of the third business day after mailing by United States mail, addressed as follows:

22 To the Settlement Class or the Plaintiff:

23 Mike Arias
 24 Arias, Ozzello & Gignac, LLP
 25 6701 Center Drive West, Suite 1400
 26 Los Angeles, CA 90045

27 To VITAS:

28 Reed E. Schaper
 Curiale Dellaverson Hirschfeld & Kraemer, LLP
 2425 Olympic Boulevard, Suite 550
 Santa Monica, California 90404

1 **15. MISCELLANEOUS**

2 **15.1** The Plaintiffs individually and as Class Representatives the Settlement Class,
3 VITAS all attorneys for the Plaintiffs and the Class, and all attorneys for VITAS, hereby
4 waive any and all rights to appeal, this waiver being contingent upon the Court entering the
5 Final Judgment attached as Exhibit "C." This waiver includes waiver of all rights to any post-
6 judgment proceeding and appellate proceeding, including but not limited to, motions to vacate
7 judgment, motions for new trial, motions under CALIFORNIA CODE OF CIVIL PROCEDURE
8 section 473, and extraordinary writs. The waiver does not include any waiver of the right to
9 oppose any appeal, appellate proceedings or post-judgment proceedings, if any.

10 **15.2** After this Agreement is fully executed by all Parties and their attorneys of
11 record, this Agreement and its attached Exhibits shall constitute the entire agreement relating
12 to settlement of this Action and the causes of action and defenses asserted therein, and it shall
13 then be deemed that no oral representations, warranties or inducements have been made to any
14 party concerning this Agreement or its Exhibits other than the representations, warranties and
15 covenants expressly stated in this Agreement and its Exhibits.

16 **15.3** This Agreement, and any and all parts of it, may be amended, modified,
17 changed, or waived only by an express written instrument signed by all Parties or their
18 successors-in-interest.

19 **15.4** After this Agreement is fully executed by all Parties and their attorneys of
20 record, all litigation in the Action shall be stayed, and no additional court filings shall be made
21 by the Parties except as specifically provided for herein and as are necessary to enforce the
22 terms of this Agreement.

23 **15.5** Plaintiffs' Attorneys unconditionally warrant and represent that they are
24 authorized by the Plaintiffs for whom they are attorneys of record, and the attorneys of record
25 for VITAS warrant and represent that they are authorized by VITAS, to take all appropriate
26 action required or permitted to be taken by such Parties pursuant to this Agreement to
27 effectuate its terms, and to execute any other documents required to effectuate the terms of
28 this Agreement. The Parties and their counsel will cooperate with each other and use their

1 best efforts to effect the implementation of the Settlement. In the event the Parties are unable
2 to reach agreement on the form or content of any document needed to implement the
3 Agreement, or on any supplemental provisions that may become necessary to effectuate the
4 terms of this Agreement, the Parties agree to seek the assistance of the Court, and in all cases
5 all such documents, supplemental provisions and assistance of the Court shall be consistent
6 with this Agreement.

7 15.6 This Agreement shall be binding upon, and inure to the benefit of the parties
8 and their successors and assigns.

9 15.7 All terms of this Agreement and its Exhibits shall be governed by and
10 interpreted according to the laws of the State of California, without giving effect to any
11 conflict of law principles or choice of law principles.

12 15.8 The Parties have cooperated in the drafting and preparation of this Agreement.
13 This Agreement shall not be construed against any party on the basis that the party was the
14 drafter or participated in the drafting.

15 15.9 This Agreement may be executed in one or more counterparts. All executed
16 counterparts and each of them shall be deemed to be one and the same instrument provided
17 that counsel for the Parties to this Agreement shall exchange among themselves original
18 signed counterparts. Facsimile signatures will be accepted if the original signature is not
19 provided within five (5) business days. Any executed counterpart shall be admissible in
20 evidence to prove the existence and contents of this Agreement.

21 15.10 Plaintiffs and VITAS believe that this is a fair, reasonable and adequate
22 Settlement and have arrived at this Settlement through arms-length negotiations, taking into
23 account all relevant factors, present and potential.

24 15.11 The Parties agree that the Court shall retain jurisdiction to enforce the terms of
25 this Agreement pursuant to CALIFORNIA CODE OF CIVIL PROCEDURE § 664.6 and CALIFORNIA
26 RULES OF COURT, RULE 1859.

27 ///

1 15.12 The descriptive headings of any paragraph or sections of this Agreement are
2 inserted for convenience of reference only and do not constitute a part of this Agreement.

3
4 Dated: March ____, 2006

ARIAS, OZZELLO & GIGNAC LLP

5
6
7 By: 

MIKE ARIAS
MIKAEL STAHL
LOUIS PACELLA
Attorneys for Class Plaintiffs

8
9
10 Dated: March ____, 2006

VITAS HEALTHCARE CORPORATION OF CALIFORNIA

11
12
13 By: _____

14 Defendant

15
16 Dated: March ____, 2006

CURIALE DELLAVERSON HIRSCHFELD & KRAEMER, LLP

17
18
19 By: _____

REED SCHAPER
JUDY IRIYE
ROBERT FLEMER
Attorneys for Defendant

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15.12 The descriptive headings of any paragraph or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

Dated: April __, 2006

ARIAS, OZZELLO & GIGNAC LLP

By: _____
MIKE ARIAS
MIKAEL STAHLER
LOUIS PACHELLA
Attorneys for Class Plaintiffs


Dated: April __, 2006

VITAS HEALTHCARE CORPORATION OF CALIFORNIA

By: _____
Defendant

Dated: April 17, 2006

CURIALE DELLAVERSON HIRSCHFELD & KRAEMER, LLP

By:  _____
REED SCHAPER
JUDY IRIYE
ROBERT FLEMER
Attorneys for Defendant

ARIAS, OZZELLO & GIGNAC, LLP

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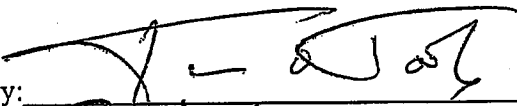
Dated: April __, 2006

ARIAS, OZZELLO & GIGNAC LLP

By: _____
MIKE ARIAS
MIKAEL STAHL
LOUIS PACELLA
Attorneys for Class Plaintiffs

Dated: April 20, 2006

VITAS HEALTHCARE CORPORATION OF CALIFORNIA

By: 
_____ T. A. O'Toole
Defendant

Dated: April __, 2006

CURIALE DELLAVERSON HIRSCHFELD & KRAEMER, LLP

By: _____
REED SCHAPER
JUDY IRIYE
ROBERT FLEMER
Attorneys for Defendant