

1 Catha Worthman (SBN 230399)
2 Genevieve Casey (SBN 264928)
3 FEINBERG, JACKSON, WORTHMAN & WASOW LLP
383 4th Street, Suite 201
Oakland, CA 94607
4 Telephone: (510) 269-7998
Facsimile: (510) 269-7994
5 Email: catha@feinbergjackson.com
genevieve@feinbergjackson.com

6 Attorneys for Plaintiffs and the Proposed Class
7 *Additional Counsel Identified on Signature Pages*

8 SEYFARTH SHAW LLP
9 Camille Olson (SBN 111919)
Richard B. Lapp (SBN 271052)
10 Robin E. Devaux (SBN 233444)
560 Mission Street, 31st Floor
San Francisco, CA 94105
11 Telephone: (415) 397-2823
Facsimile: (415) 397-8549
12 Email: colson@seyfarth.com
rlapp@seyfarth.com
13 rdevaux@seyfarth.com

14 Attorneys for Defendants
15 Kindred Healthcare, Inc., Professional Healthcare
at Home, LLC; and NP Plus, LLC
16 *Additional Counsel Identified on Signature Pages*

17 **SUPERIOR COURT OF THE STATE CALIFORNIA**
18 **FOR THE COUNTY OF ALAMEDA**

19 GINGER ROGERS and EMMA DELORES
20 HAWKINS, individually and on behalf of all
21 others similarly situated,

22 Plaintiffs,

23 v.

24 KINDRED HEALTHCARE, INC., a Delaware
Corporation; PROFESSIONAL HEALTHCARE
25 AT HOME, LLC, a California LLC; NP PLUS,
LLC, a Delaware LLC; and DOES 1-15,
26 inclusive,

27 Defendants.

Case No. RG14729507

CLASS ACTION

**ASSIGNED FOR ALL PURPOSES TO
JUDGE WINIFRED Y. SMITH, DEPT. 21**

**JOINT STIPULATION AND CLASS
ACTION SETTLEMENT AGREEMENT**

Action Filed: June 18, 2014

1 IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs Ginger Rogers and
2 Emma Delores Hawkins (jointly, “Plaintiffs”), individually and on behalf of all others similarly situated,
3 and Defendants Kindred Healthcare, Inc., Professional Healthcare at Home, LLC, and NP Plus, LLC
4 (collectively, “Defendants,” and jointly with Plaintiffs, the “Parties”), AS FOLLOWS:

5 **I. INTENTION OF THE PARTIES**

6 1. This Joint Stipulation and Class Action Settlement Agreement and all associated exhibits and
7 attachments (hereinafter, “Settlement Agreement”), made and entered into by and between Plaintiffs (for
8 themselves and on behalf of the Class Members) and Defendants, each with the assistance of their
9 respective counsel, is intended to fully, finally, and forever settle, compromise and discharge the
10 Released Claims¹ against the Released Parties arising from or related to the Action, subject to the terms
11 and conditions set forth herein.

12 2. Because this Action was pled as a class action pursuant to California Code of Civil Procedure
13 § 382, this settlement must receive the Court’s Preliminary and Final Approval. Accordingly, the Parties
14 enter into this Settlement Agreement on a conditional basis.

15 3. The Parties agree that this Settlement Agreement has been negotiated at arm’s length. The
16 Parties further agree the settlement is fair, reasonable, and adequate and will so represent to the Court.

17 4. In the event that this Settlement Agreement is not approved by the Court, fails to become
18 effective, or is reversed, withdrawn, or modified by the Court or any other court with jurisdiction over
19 the Action, the Settlement Agreement shall become null and void and shall have no bearing on, and shall
20 not be admissible in connection with, further proceedings in this Action, including proceedings to
21 determine whether class certification should be granted other than for the purposes of this settlement, or
22 in any other judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue,
23 substantive or procedural. Notwithstanding the preceding sentence, this Settlement Agreement shall be
24 admissible in any action or proceeding to approve, interpret or enforce this Settlement Agreement. None
25 of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections,
26 defenses, privileges, or arguments with respect to the issue of class certification or the merits of
27 Plaintiffs’ claims.

28 _____
¹ All capitalized terms are defined herein.

II. LITIGATION BACKGROUND

1
2 5. This Action was filed in Alameda County Superior Court on June 18, 2014. An original
3 complaint and an amended complaint were filed.

4 6. Plaintiffs allege that Defendants have not paid Plaintiffs and the Class Members the contract rate
5 or minimum wage for all hours worked, and in doing so have violated Labor Code §§ 1194, 1194.2,
6 1197 and 1197.1; the Minimum Wage Order (MW-2014); and Wage Orders 4-2001 and 15-2001.
7 Plaintiffs further allege that Defendants have failed to issue accurate wage statements displaying all
8 information required by Labor Code § 226 and have failed to maintain accurate employee records of all
9 hours worked, in violation of Labor Code § 1174. Plaintiffs also allege that Defendants have failed to
10 provide the overtime pay, meal periods, and rest periods mandated by California law to the Plaintiffs and
11 other Class Members who cared for Defendants' clients in facilities other than private homes, and in
12 doing so have violated Labor Code §§ 226.7, 510, and 1194(a); and Wage Order 4-2001. Based on these
13 allegations, Plaintiffs have brought claims on behalf of themselves and similarly situated individuals for
14 illegal business practices pursuant to the Business and Professions Code §§ 17200, *et seq.* Finally,
15 Plaintiffs allege that they and the Class Members are entitled to civil penalties under the Private
16 Attorneys General Act, California Labor Code § 2698, *et seq.* ("PAGA"), and for other former
17 employees, to waiting time penalties pursuant to Labor Code §§ 201-203.

18 7. Defendants deny any liability or wrongdoing of any kind, including but not limited to liability or
19 wrongdoing that was alleged or could have been alleged in Plaintiffs' Complaint, and further deny that,
20 for any purpose other than settling the Action, this Action is appropriate for class treatment. Defendants
21 contend they have complied at all times with the California Labor Code, the California Wage Orders,
22 and all applicable California state and federal law.

23 8. The Parties engaged in substantial pre-resolution discovery. Plaintiffs and Defendants served and
24 responded to two sets of written discovery. Defendants have produced significant documentary evidence
25 in response to Plaintiffs' formal document requests, including data regarding Class Members' work
26 assignments and hours worked and Class Members' pay statements, and responded to form and special
27 interrogatories. Plaintiffs have produced voluminous documentary evidence and responded to
28 interrogatories. Plaintiffs have taken the depositions of seven of Defendants' designated Persons Most

1 Qualified, and Defendants have deposed both Plaintiffs.

2 9. The Parties participated in a mediation session with David A. Rotman on May 21, 2015. The
3 Parties continued negotiations thereafter, and on March 18, 2016, agreed in principle to settle, the terms
4 of which are more fully laid out in this Settlement Agreement.

5 10. It is the desire of the Parties to fully, finally and forever settle, compromise and discharge all
6 disputes and claims against the Released Parties arising from or related to this Action, and that this
7 Settlement Agreement shall constitute the full and complete settlement and release of all the Released
8 Parties from all of the claims averred in the Action.

9 **III. DEFINITIONS**

10 11. The “Action” means the lawsuit entitled *Rogers, et al. v. Kindred Healthcare, Inc., et al.*, Case
11 No. RG 14729507, pending in the Superior Court of California, Alameda County (Department 21, Judge
12 Winifred Y. Smith).

13 12. “Class Counsel” means the law firm of Feinberg, Jackson, Worthman & Wasow, LLP; the Legal
14 Aid Society - Employment Law Center; and the Women’s Employment Rights Clinic, Golden Gate
15 University School of Law.

16 13. “Class” or “Class Member(s)” means all individuals who were employed as Personal Care
17 Attendants (“PCAs”) by Defendants in California, who, at any time from June 18, 2010 to April 1, 2016,
18 worked at least one shift delivering personal care as a PCA, and for whom Defendants have provided
19 timekeeping and payroll data to Class Counsel.

20 14. “Class Notice” means a notice to Class Members advising them of the terms of the settlement, to
21 be submitted in proposed form for approval by the Court with the motion for preliminary approval of the
22 settlement.

23 15. “Class Period” means the period from June 18, 2010 to April 1, 2016.

24 16. “Class Representatives” means Plaintiffs Ginger Rogers and Delores Hawkins.

25 17. “Complaint,” means Plaintiffs’ original complaint and Plaintiffs’ first amended complaint filed
26 in this Action and all allegations set forth therein.

27 18. “Court” means the Superior Court of California, Alameda County.

28 19. “Defendants” means Kindred Healthcare, Inc., Professional Healthcare at Home, LLC and NP

1 Plus, LLC.

2 20. “Final Approval Date” or “Final Approval” refers to (i) the day after the applicable date for
3 seeking appellate review of the Court’s Final Approval of the settlement has passed without a timely
4 appeal or request for review having been made; or (ii) if a timely appeal is filed, the final resolution of
5 that appeal (including any requests for rehearing and/or petitions for writ of certiorari) resulting in the
6 final judicial approval of the settlement.

7 21. “Last Known Address” means the most recent mailing address for a Class Member contained in
8 Defendants’ employee records.

9 22. “Net Settlement Amount” means the portion of the Settlement Amount that will be distributed to
10 Settlement Class Members after deductions from the Settlement Amount for (a) Class Counsel’s
11 awarded costs and attorneys’ fees; (b) the Settlement Administrator’s fees and expenses; (c) service
12 awards to the Class Representatives; and (d) the mandatory PAGA payment to the California Labor and
13 Workforce Development Agency (“LWDA”).

14 23. To “Opt Out” means for a Class Member to have submitted a written notice to the Settlement
15 Administrator, postmarked no later than 45 days after Class Notice was mailed, in order to request
16 exclusion from the Settlement Class.

17 24. “Order of Final Approval” means an order to be submitted by Plaintiffs for entry and filed by the
18 Court as specified in this Settlement Agreement.

19 25. “Preliminary Approval Date” or “Preliminary Approval” refers to the date on which the Court
20 enters the Preliminary Approval Order.

21 26. “Preliminary Approval Order” means the Court’s entered order granting preliminary approval of
22 this settlement, a proposed form of which is to be submitted by Plaintiffs for entry and filing by the
23 Court.

24 27. “Qualified Settlement Fund” or “QSF” means a fund to be set up by the Settlement
25 Administrator for the benefit of the Settlement Class, to which Defendants will wire the sum of
26 \$2,465,000 within 15 business days of Final Approval or within seven months of Preliminary Approval,
27 whichever date is earlier.

28 28. “Released Claims” means the claims released, as described by paragraph 49 below, upon the

1 settlement receiving Final Approval and Settlement Class Members being sent a Settlement Award
2 payment.

3 29. “Released Parties” means Defendants and their respective former and current parents,
4 subsidiaries, affiliated corporations, officers, directors, employees, partners, shareholders and agents,
5 and any other successors, assigns, or legal representatives.

6 30. “Settlement Administrator” means Settlement Services, Inc.

7 31. “Settlement Agreement” means this Agreement, which the Parties understand and agree sets
8 forth all material terms and conditions of the settlement between them and which is subject to Court
9 approval.

10 32. “Settlement Amount” means the sum of \$2,465,000 plus the interest earned on that amount from
11 the time deposited in the Qualified Settlement Fund until the time distributed, as arranged by the
12 Settlement Administrator. The Settlement Amount shall cover settlement payments to Class Members,
13 attorneys’ fees, costs and expenses directly related to the Action subject to Court approval (which
14 includes all such fees and costs incurred to date, as well as additional fees and costs incurred in
15 documenting the settlement, securing court approval of the settlement, and obtaining a dismissal of the
16 action); any service awards to the Class Representatives approved by the Court; any payments reserved
17 for the California Labor & Workforce Development Agency (“LWDA”) under the California Private
18 Attorney General Act, Cal. Lab. Code section 2699, *et seq.* (“PAGA”); and the Settlement
19 Administrator’s fees and expenses (including fees incurred in connection with the Class Notice). There
20 shall be no reversion of any amount to Defendants.

21 33. “Settlement Award(s)” means the total gross amount due to a Settlement Class Member.

22 34. “Settlement Class” or “Settlement Class Members” refers to the collective group of all Class
23 Members who do not opt out or request exclusion from the Class.

24 35. “Work Weeks” means the number of weeks during the Class Period in which a Class Member
25 was employed by one or more of the Defendants and worked at least one shift in California providing
26 personal care to Defendants’ clients as a PCA.

27 **IV. TERMS OF SETTLEMENT**

28 NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set

1 forth herein, the Parties hereby further stipulate and agree, subject to the Court’s approval, as follows:

2 36. Stipulation to Certify Class for the Purposes of this Settlement: The Action may be certified as a
3 class action for settlement purposes only pursuant to California Code of Civil Procedure § 382, for the
4 purposes of the monetary relief and release provided in the Settlement Agreement. Consistent with the
5 definition previously set forth in paragraph 13 above, the Class shall be defined and consist of “All
6 individuals who were employed by Defendants in California as Personal Care Attendants (‘PCAs’),
7 who, at any time from June 18, 2010 to April 1, 2016, worked at least one shift delivering personal care
8 as a PCA, and for whom Defendants have provided timekeeping and payroll data to Class Counsel as of
9 the date of execution of this Agreement.” Plaintiffs and their attorneys (Feinberg, Jackson, Worthman &
10 Wasow LLP, the Legal Aid Society - Employment Law Center, and the Women’s Employment Rights
11 Clinic, Golden Gate University School of Law), may be appointed Class Representatives and Class
12 Counsel, respectively.

13 37. Settlement Amount and Payment: Within 15 business days of Final Approval or within seven
14 months of Preliminary Approval, whichever date is earlier, Defendants will wire to the QSF the amount
15 of \$2,465,000. This amount will earn interest from the time deposited in the QSF until the time
16 distributed, as arranged by the Settlement Administrator, and the sum of \$2,465,000 plus interest earned
17 on that amount (“Settlement Amount”) shall cover payments to Settlement Class Members; attorneys’
18 fees, costs and expenses directly related to this Action, including fees and costs incurred in documenting
19 the settlement, securing court approval of the settlement, and obtaining a dismissal of the action; any
20 service awards to the Class Representatives approved by the Court; any payments reserved for the
21 California LWDA under PAGA, Cal. Lab. Code section 2699 *et seq.*; and the Settlement
22 Administrator’s fees and expenses (including fees incurred in connection with the Class Notice). There
23 shall be no reversion of any amount to Defendants.

24 38. Treatment of Class Settlement Award(s): The Parties recognize that the amounts to be paid to
25 Settlement Class Members reflect settlement of claimed wages, interest, and penalties. The Parties agree
26 that 33.33% of all payments to Settlement Class Members will be treated as wages subject to W2
27 reporting, and therefore, normal payroll taxes and withholdings will be deducted pursuant to state and
28 federal law and the employer will make all required contributions of employer’s share of payroll taxes.

1 The other 66.67% represents interest and penalties sought in the lawsuit and claimants will be issued an
2 IRS Form 1099 for that portion of their payments.

3 39. PAGA Penalties: The Parties allocate the amount of \$50,000 to settlement of claims for penalties
4 under PAGA. The Settlement Administrator will reserve 75% of this amount, or \$37,500, to provide to
5 the LWDA.

6 40. Service Awards to Class Representatives: The Parties agree to the designation of Plaintiffs
7 Ginger Rogers and Emma Delores Hawkins as Class Representatives. Plaintiffs will apply for service
8 awards of up to \$10,000 for each Class Representative, to be paid out of the Settlement Amount.
9 Defendants will not oppose Plaintiffs' application to the Court for service awards of up to \$10,000 to
10 each Class Representative to be paid out of the Settlement Amount, in addition to each Class
11 Representative's Settlement Award payment as a Class Member. The Parties agree that the Service
12 Awards will be treated as wages subject to W2 reporting, and therefore, normal payroll taxes and
13 withholdings will be deducted pursuant to state and federal law and the employer will make all required
14 contributions of employer's share of payroll taxes.

15 41. Attorneys' Fees and Costs: Defendants will not oppose Class Counsel's application to the Court
16 for attorneys' fees not to exceed 25% of the Settlement Amount, plus reimbursement of litigation
17 expenses not to exceed \$100,000, not including the Settlement Administrator's fees and expenses.
18 Defendants will issue to each Class Counsel firm or organization a Form 1099 with respect to their
19 awarded attorneys' fees and costs. The Parties understand that attorneys' fees are left to the sound
20 discretion of the Court, and that the Settlement is not contingent on the Court awarding any amount of
21 attorneys' fees.

22 42. Calculation and Distribution of Payments to Class Representatives, Class Counsel, and
23 Individual Settlement Class Members:

- 24 a. Following the deduction of service awards to Class Representatives, Class Counsel's
25 awarded fees and costs, the reserved amount to be paid to the LWDA, and the Settlement
26 Administrator's fees and expenses, the Net Settlement Amount will be distributed on a
27 pro rata basis to each Settlement Class Member, based on a formula that Class Counsel
28 will decide after consulting in good faith with counsel for Defendants. There shall be a

1 minimum payment of \$25 per Settlement Class Member.

2 b. Once the settlement becomes Final, as defined herein, the Settlement Amount will be
3 distributed as follows:

4 i. The payments to Class Representatives of any Court-approved service awards will
5 be paid within 30 days after the settlement becomes Final.

6 ii. The payments to Settlement Class Members will be made within 30 days after the
7 settlement becomes Final. The Settlement Administrator is responsible for
8 making appropriate payroll deductions, reporting obligations, and issuing
9 settlement checks.

10 iii. The Settlement Administrator will distribute the individual Settlement Award
11 payments through First Class Mail. The Settlement Administrator will make a
12 reasonable effort to make a second delivery attempt to Settlement Class Members
13 if the initial distribution effort fails. Such efforts will include performing an
14 additional NCOA check, using Social Security numbers to obtain better address
15 information, and using contact information for Settlement Class Members
16 provided by Class Counsel. For Settlement Class Members whose payments are
17 greater than \$1,500, Class Counsel will attempt to call such Settlement Class
18 Members. The Parties will cooperate to distribute settlement checks to as many
19 Settlement Class Members as possible. Defendants understand that Plaintiffs'
20 Counsel will be reaching out to Settlement Class Members to find them and
21 encourage them to cash their checks.

22 iv. The payments to Class Counsel for their awarded attorneys' fees and costs will be
23 made within 30 days after the Final Approval Date.

24 43. Injunctive Relief: This Settlement Agreement requires Defendants to adopt or confirm systemic
25 changes in their timekeeping and payroll practices to ensure required wages are paid to all PCAs in
26 compliance with California law, as follows:

27 a. Within 10 days of the Final Approval Date, to the extent they have not already done so,
28 Defendants will change their payment practices and begin paying all PCAs, including but

1 not limited to the members of the Settlement Class, by the hour (instead of by shift), for
2 all hours worked, including time during which the PCAs may be sleeping;

- 3 b. Within 10 days of the Final Approval Date, to the extent they have not already done so,
4 Defendants will change their payment practices and begin paying all PCAs for hours
5 worked in facilities, including but not limited to the members of the Settlement Class,
6 according to Wage Order 4 (i.e., minimum wage, overtime, and doubletime, and
7 providing meal periods and making rest breaks available);
- 8 c. Within 45 days of the Final Approval Date, to the extent they have not already done so,
9 Defendants will incorporate the above provisions into their employee manuals and
10 training materials, including written and web-based materials;
- 11 d. Within 45 days of the completion of the paragraph 43(c), above, Defendants will ensure
12 that all branch managers and other administrative staff are adequately informed of the
13 above and have effectively distributed the above information and materials to all PCAs;
14 and
- 15 e. Within 110 days of the Final Approval Date, Defendants will provide Class Counsel with
16 written confirmation of the above communications and assurances.

17 **44. Final Production of Class Data:**

- 18 a. Defendants have provided to Class Counsel certain data, as follows:
- 19 i. A class list identifying any new class members added since May 2015, and the
20 Work Weeks for those class members; and
- 21 ii. A month of detailed timekeeping and payroll data from January 2016.
- 22 b. Class Counsel shall review the data provided to confirm that Kindred has, as data prior to
23 May 2015 reflects, ceased the following practices: (1) not paying overtime for facility
24 shifts under Wage Order 4; and (2) not paying for sleep time for live-in shifts, as well as
25 to confirm (3) that the number of Class Members added is consistent with no more than
26 450 Class Members hired between the last time data was provided to Class Counsel and
27 April 1, 2016. Class Counsel has the right to declare void the Parties' agreement in
28 principle to settle and to resume litigation in the event that the data demonstrates

1 otherwise. Plaintiffs shall inform Defendants of any intention to void this agreement no
2 later than the date for filing the motion for preliminary approval (May 16, 2016, per
3 agreement between the Parties).

4 45. Process for Preliminary Approval and Class Notice

- 5 a. Per prior agreement of the Parties, on April 25, 2016, Plaintiffs provided to Defendants a
6 draft of the memorandum of points and authorities in support of Plaintiffs' motion for
7 preliminary approval of the settlement. Plaintiffs will move this Court for preliminary
8 approval of the settlement by May 16, 2016.
- 9 b. The Parties agree that, as provided herein, the proposed Preliminary Approval Order will
10 include: 1) findings that, for purposes of settlement, the Class satisfies the California
11 requirements for class certification; 2) appointment of Ginger Rogers and Emma Delores
12 Hawkins as Class Representatives; 3) service awards for the Class Representatives; 4)
13 appointment of Class Counsel, as defined herein; 5) approval of the form of Class Notice,
14 as well as a notice plan; 6) a date for mailing the Class Notice; 7) a deadline within 45
15 days to opt out of and/or object to the settlement. In the event more than 10% of Class
16 Members opt out of the settlement, the Defendants shall have the right to void the
17 settlement. Neither party nor their counsel shall encourage any Class Member to opt out
18 of the settlement; provided, however, that nothing herein shall prevent Class Counsel
19 from providing advice to Class Members consistent with Class Counsel's fiduciary
20 duties.
- 21 c. Within 10 days after the Court issues its Preliminary Approval Order, Defendants will
22 provide to the Settlement Administrator two sets of data: 1) the names, Last Known
23 Addresses and telephone numbers, Social Security numbers, dates of employment, total
24 Work Weeks, hours, and live-in shifts for each Class Member from the beginning of the
25 Class Period through approximately April 30, 2015.; and 2) post-April 2015, the names,
26 Last Known Addresses and telephone numbers, Social Security numbers, dates of
27 employment and total Work Weeks for each Class Member. The Work Week, hours, and
28 live-in shift data for the period from the beginning of the class period through

1 approximately April 30, 2015, shall be identical to the data already provided to class
2 counsel in documents KND005511, KND005512, and KND011203. The post-April 2015
3 data may be provided in the same format as KND011205 and KND011212, or shall
4 otherwise be sufficient to identify Class Members added since May 2015 and calculate
5 their Work Weeks.

6 d. Within 16 days after receiving the Class Member information from Defendants, the
7 Settlement Administrator will send the Class Notice to each Class Member by U.S. Mail.
8 In the event of returned or non-deliverable Class Notices, the Settlement Administrator
9 will make reasonable efforts to locate Class Members and re-send the Class Notices by
10 U.S. Mail.

11 e. Class Notice will be in English and Spanish and will include a statement that Defendants
12 will pay out the same amount regardless of how many Class Members participate and/or
13 cash their checks, and that there will be no retaliation for participation. Class Notice will
14 also inform Class Members that they may challenge their number of live-in shifts, hours,
15 and/or workweeks, as shown in the Class Notice, by contacting the Settlement
16 Administrator with any supporting evidence within 45 days of the date Class Notice was
17 mailed.

18 f. The expiration date on the Settlement Award checks will be 180 days from the date the
19 Settlement Award checks are issued.

20 46. Procedure for Requesting Exclusion and Objecting to the Settlement:

21 a. To opt out of the settlement, a Class Member must send a letter to the Settlement
22 Administrator postmarked no later than 45 days after Class Notice was mailed.

23 b. To object to the settlement, a Class Member must submit his or her objection to the Clerk
24 of the Court, with copies to the Settlement Administrator and counsel for the Parties,
25 postmarked no later than 45 days after Class Notice was mailed.

26 47. Motion for Final Approval and Fairness Hearing:

27 a. Plaintiffs will move the Court for Final Approval of the settlement. No later than 5
28 business days before filing for Final Approval, Plaintiffs will share with Kindred's

1 counsel a draft memorandum of points and authorities in support of the motion for Final
2 Approval.

- 3 b. If the Court does not grant Final Approval of the settlement, or if the Court's Final
4 Approval of the settlement is reversed or materially modified on appellate review, then
5 the settlement will become null and void, provided, however, that an award of a Class
6 Representative service award or Class Counsel's attorneys' fees and expenses in an
7 amount less than sought will not constitute a failure to grant Final Approval or a material
8 modification.

9 48. Distribution of Residual: In the event that there are unclaimed funds, they will be distributed pro
10 rata to the Settlement Class Members who have cashed their checks if the unclaimed funds, less the
11 amount the Settlement Administrator estimates for any remaining administration costs, including the
12 amount required to mail a second round of checks to Settlement Class Members, are \$35,000 or greater.
13 If the unclaimed funds are less than \$35,000 once the Settlement Administrator's estimated additional
14 costs are taken into account, the unclaimed funds shall be distributed in equal shares between Asian
15 Americans Advancing Justice - Asian Law Caucus and Mujeres Unidas y Activas, provided the Court
16 approves.

17 49. Releases:

- 18 a. Upon the settlement becoming Final and being sent a Settlement Award payment, each
19 Settlement Class Member and Class Representative shall release the Released Parties (as
20 defined in paragraph 29 above) from any claims that were brought, or could have been
21 brought, from June 18, 2010 to April 1, 2016, arising out of the facts alleged in the
22 Amended Complaint in this Action, including all claims under California law related to
23 failure to pay minimum wage for all hours worked, failure to pay for all hours worked,
24 failure to provide accurate wage statements, failure to keep accurate payroll records,
25 failure to pay overtime, failure to provide meal and rest periods, waiting time penalties,
26 and violations of the Unfair Competition Law predicated on violations of the Labor Code
27 and Wage Orders 4 and 15. The Released Claims shall expressly include any and all
28 penalties established by PAGA for any of the claims described in this paragraph. Claims

1 for benefits arising under the Employee Retirement Income Security Act (“ERISA”) are
2 expressly preserved.

- 3 b. With respect to the Released Claims, the Class Representatives, and the Class
4 Representatives only, shall waive the protections of California Civil Code section 1542.
5 The Class Representatives acknowledge that they each may have claims that are presently
6 unknown and that the release contained in this Settlement Agreement is intended to
7 forever discharge all Released Claims, whether now asserted or unasserted, known or
8 unknown, suspected or unsuspected, which if known, might have affected the decision to
9 enter into this release. The Class Representatives shall be deemed to waive, as to the
10 Released Claims only, any right conferred by any law that limits a person’s release of
11 unknown claims. In making this waiver, the Class Representatives understand that they
12 may discover facts in addition to or different from those that are currently known or
13 believed to be true with respect to the Released Claims, but agree that it is their intention
14 to forever release any and all Released Claims, known or unknown, suspected or
15 unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without
16 regard to the subsequent discovery or existence of additional or different facts. The
17 foregoing waiver includes, without limitation, an express waiver, as to the Released
18 Claims, to the fullest extent permitted by law, any and all rights under California Civil
19 Code section 1542, which provides:

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

24 In addition, the Class Representatives also expressly waive, as to the Released Claims,
25 any right that is similar, comparable, or equivalent to California Civil Code § 1542.

26 **50. Miscellaneous Provisions:**

- 27 a. The Parties will work together expeditiously to obtain Preliminary and Final Approval of
28 the settlement.

- 1 b. The terms of this settlement shall remain confidential until they are presented to the Court
2 in connection with a motion for preliminary approval.
- 3 c. Counsel for the Plaintiffs and Counsel for Defendants agree that they have authority to
4 execute this Settlement Agreement for and on behalf of the Parties. The signatories
5 hereby represent that there are fully authorized to enter into this Settlement Agreement
6 and bind the Parties hereto to the terms and conditions hereof.
- 7 d. This Settlement Agreement contains the entire agreement between the Parties relating to
8 the settlement and transaction contemplated hereby, and all prior or contemporaneous
9 agreements, understandings, representations, and statements, whether oral or written and
10 whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder
11 may be waived except in writing.
- 12 e. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
13 hereto and their respective heirs, trustees, executors, administrators, and successors. The
14 Parties hereto represent, covenant, and warrant that they have not directly or indirectly
15 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
16 person or entity any portion of any liability, claim, demand, action, cause of action or
17 rights herein released and discharged except as set forth herein.
- 18 f. It is agreed that because the members of the Settlement Class are so numerous, it is
19 impractical to have each member of the Settlement Class execute this Settlement
20 Agreement. The Class Notice will advise all Class Members of the binding nature of the
21 release and the Court's judgment, upon its entry, shall have the same force and effect as if
22 this Agreement were executed by each Settlement Class Member.
- 23 g. This Settlement Agreement may be executed in counterparts with signatures transmitted
24 by facsimile or as electronic images of the original signatures. When each Party has
25 signed or delivered at least one such counterpart, each counterpart shall be deemed an
26 original, and, when taken together with the other signed counterparts, shall constitute one
27 Settlement Agreement, binding and effective as to all Parties. A facsimile or electronic
28 image of the original signature shall have the same force and effect as the original

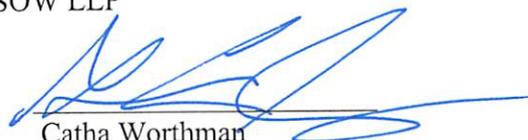
signature.

IT IS SO STIPULATED.

DATED: May 11, 2016

FEINBERG, JACKSON, WORTHMAN &
WASOW LLP

By:



Catha Worthman

CATHA WORTHMAN (SBN 230399)
GENEVIEVE CASEY (SBN 264928)
FEINBERG, JACKSON, WORTHMAN &
WASOW LLP
383 4th Street, Suite 201
Oakland, CA 94607
Telephone: (510) 269-7998
Facsimile: (510) 269-7994
Email: catha@feinbergjackson.com
genevieve@feinbergjackson.com

DIANE WEBB (SBN 197851)
CAROLE VIGNE (SBN 251829)
LEGAL AID SOCIETY – EMPLOYMENT LAW
CENTER
180 Montgomery Street, Suite 600
San Francisco, CA 94104
Telephone: (415) 864-8848
Facsimile: (415) 593-0096
Email: dwebb@las-elc.org
cvigne@las-elc.org

HINA SHAH (SBN 179002)
WOMEN'S EMPLOYMENT RIGHTS CLINIC
GOLDEN GATE UNIVERSITY SCHOOL OF LAW
536 Mission Street
San Francisco, CA 94105-2968
Telephone: (415) 442-6649
Facsimile: (415) 896-2450
Email: hshah@ggu.edu

Attorneys for Plaintiffs and the Proposed Class

DATED: May 11, 2016

Ginger Rogers
Plaintiff

signature.

IT IS SO STIPULATED.

DATED: May 11, 2016

FEINBERG, JACKSON, WORTHMAN &
WASOW LLP

By: _____
Catha Worthman

CATHA WORTHMAN (SBN 230399)
GENEVIEVE CASEY (SBN 264928)
FEINBERG, JACKSON, WORTHMAN &
WASOW LLP
383 4th Street, Suite 201
Oakland, CA 94607
Telephone: (510) 269-7998
Facsimile: (510) 269-7994
Email: catha@feinbergjackson.com
genevieve@feinbergjackson.com

DIANE WEBB (SBN 197851)
CAROLE VIGNE (SBN 251829)
LEGAL AID SOCIETY – EMPLOYMENT LAW
CENTER
180 Montgomery Street, Suite 600
San Francisco, CA 94104
Telephone: (415) 864-8848
Facsimile: (415) 593-0096
Email: dwebb@las-elc.org
cvigne@las-elc.org

HINA SHAH (SBN 179002)
WOMEN’S EMPLOYMENT RIGHTS CLINIC
GOLDEN GATE UNIVERSITY SCHOOL OF LAW
536 Mission Street
San Francisco, CA 94105-2968
Telephone: (415) 442-6649
Facsimile: (415) 896-2450
Email: hshah@ggu.edu

Attorneys for Plaintiffs and the Proposed Class

DATED: May 11, 2016


Ginger Rogers
Plaintiff

1 DATED: May 11, 2016


Delores Hawkins
Plaintiff

2
3
4 DATED: May 11, 2016

SEYFARTH SHAW LLP

By: _____
Richard B. Lapp

CHRISTOPHER A. CROSMAN (SBN 190336)
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, CA 90067-43021
Telephone: (310) 227-7200
Facsimile: (310) 201-5219
Email: rlapp@seyfarth.com
ccrosman@seyfarth.com

CAMILLE OLSON (SBN 111919)
RICHARD B. LAPP (SBN 271052)
ROBIN E. DEVAUX (SBN 233444)
SEYFARTH SHAW LLP
560 Mission Street, 31st Floor
San Francisco, CA 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549
Email: colson@seyfarth.com
rlapp@seyfarth.com
rdevaux@seyfarth.com

*Attorneys for Defendants Kindred Healthcare, Inc.,
Professional Healthcare At Home, LLC; and NP Plus, LLC*

19
20 DATED: May 11, 2016

DEFENDANTS KINDRED HEALTHCARE, INC.,
PROFESSIONAL HEALTHCARE AT HOME, LLC, and
NP PLUS, LLC

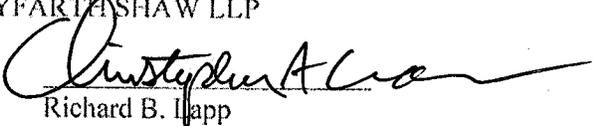
By: _____

1 DATED: May 11, 2016

Delores Hawkins
Plaintiff

4 DATED: May 11, 2016

SEYFARTH SHAW LLP

By: 
Richard B. Lapp

CHRISTOPHER A. CROSMAN (SBN 190336)
SEYFARTH SHAW LLP
2029 Century Park East, Suite 3500
Los Angeles, CA 90067-43021
Telephone: (310) 227-7200
Facsimile: (310) 201-5219
Email: rlapp@seyfarth.com
ccrosman@seyfarth.com

CAMILLE OLSON (SBN 111919)
RICHARD B. LAPP (SBN 271052)
ROBIN E. DEVAUX (SBN 233444)
SEYFARTH SHAW LLP
560 Mission Street, 31st Floor
San Francisco, CA 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549
Email: colson@seyfarth.com
rlapp@seyfarth.com
rdevaux@seyfarth.com

*Attorneys for Defendants Kindred Healthcare, Inc.,
Professional Healthcare At Home, LLC; and NP Plus, LLC*

21 DATED: May 11, 2016

DEFENDANTS KINDRED HEALTHCARE, INC.,
PROFESSIONAL HEALTHCARE AT HOME, LLC, and
NP PLUS, LLC

By: 