

**JOINT STIPULATION  
OF SETTLEMENT AND RELEASE**

Subject to approval by the United States District Court for the Northern District of Ohio, Eastern Division, Hon. James S. Gwin, U.S. District Judge, presiding (“District Court”), Plaintiffs Kimberly Glenn and Annie Holloway, individually and on behalf of the Class Members, and Defendants Nightingale Home Support & Care, Inc., ‘S’ Generation Center, Inc., and Stella Nsong (“Nightingale”), agree to the terms of this Joint Stipulation of Settlement and Release.

**DEFINITIONS**

1. “Action” shall mean the civil action in the United States District Court for the Northern District of Ohio, Eastern Division entitled *Kimberly Glenn, et al. v. Nightingale Home Support & Care, Inc., et al.* No. 1:17-cv-6.

2. “Representative Plaintiffs” or “Plaintiffs” shall mean Kimberly Glenn and Annie Holloway.

3. “Defendants” shall mean Nightingale Home Support & Care, Inc., ‘S’ Generation Center, Inc., and Stella Nsong, and all of their former, current and respective officers, directors, agents, parents, predecessors, successors, subsidiaries, and related and affiliated entities.

4. “Class Members” shall consist of Representative Plaintiffs, the “Existing Opt-In Party Plaintiffs,” and all of the “Eligible Settlement Participants” who execute and return Consent and Release Forms.

5. “Existing Opt-In Party Plaintiffs” consists of three (3) employees, Dorrett Rittenbaugh, Jennifer Jenkins, and Charlene Gamble, who have already joined the case, and who are current and/or former home health aides of Defendants.

6. “Eligible Settlement Participants” consist of the 34 employees identified in Appendix 1 as “Eligible Settlement Participants” who have not already joined the case, and who are current and former non-exempt home health aides of Defendants who worked over 40 hours in one or more workweeks between January 1, 2015 and December 31, 2017, and who were paid their regular hourly rate, rather than the overtime rate of one and one-half their hourly rate for hours worked over 40.

7. “Parties” shall mean the Representative Plaintiffs and Defendants, and “Party” shall mean any one of the Parties.

8. “Class Counsel” are Anthony J. Lazzaro, Chastity L. Christy, and Lori M. Griffin of The Lazzaro Law Firm. “Defendants’ Counsel” is Jennifer Corso of Petronzio Schneier Co. LPA.

9. “Settlement” or “Agreement” shall mean this Joint Stipulation of Settlement and Release.

### **RECITALS**

10. On January 3, 2017, Representative Plaintiffs Kimberly Glenn and Annie Holloway commenced the Action on behalf of themselves and all other similarly situated to them with respect to the claims they asserted.

11. In the Action, Plaintiffs alleged that Defendants failed to pay their non-exempt home health aides, including Plaintiffs, overtime compensation at the rate of one and one-half times their regular rate of pay for the hours they worked over 40 each workweek, in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. 201-219.

12. Defendants answered the Complaint, denying full liability and disputing the damages asserted by Plaintiffs.

13. Plaintiffs believe that the Action is meritorious based on alleged violations of the FLSA and OMFWSA, and that the Action is appropriate for collective treatment. Defendants deny certain allegations.

14. Between April 2017 and September 2017, the Parties engaged in informal yet comprehensive discovery regarding Plaintiff’s claims and Defendant’s defenses to such claims.

15. On September 27, 2017, the Parties reached an agreement to settle the Action on the terms set forth in this Settlement Agreement.

16. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all Released Claims for the Release Period.

17. Class Counsel represents that they have conducted a thorough investigation into the facts of this Action, and have diligently pursued an investigation of Plaintiffs’ claims against Defendants, including researching the applicable law and the potential defenses. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, adequate and reasonable and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and Defendants’ defenses. Defendants agree that the Settlement is fair, adequate, and reasonable.

18. This Settlement represents a compromise of disputed claims. Nothing in this Settlement is intended or will be construed as an admission by Defendants that Plaintiffs’ claims in the Action have merit or that Defendants have liability to Plaintiffs on all of those claims.

### **SETTLEMENT PAYMENTS**

19. **Total Eligible Settlement Amount:** The Total Eligible Settlement Amount is Thirty-Four Thousand Dollars (\$34,000.00), which sum will cover: (a) all of the Individual

Payments to the Class Members; (b) Representative Plaintiff's Representative Payment; and (c) Class Counsel's attorneys' fees and expenses.

20. **Settlement Payments to Class Members:** Fifteen Thousand Two Hundred Forty-Four Dollars and Seventy-Five Cents (\$15,244.75) of the Total Eligible Settlement Amount will be divided into Individual Payments to the Class Members.

21. **Calculation of Individual Payments:** The Individual Payments, after deduction of the Class Representative Payments and Class Counsel's attorneys' fees and expenses from the Total Eligible Settlement Amount, were calculated by Class Counsel and approved by Defendants' Counsel, and are based proportionally on Representative Plaintiffs', Existing Opt-In Party Plaintiffs', and each Eligible Settlement Participant's alleged overtime damages during the Calculation Period. The Individual Payments are provided in Appendix 1.

22. **Calculation Period:** The Calculation Period for the Class Members shall mean the period between January 1, 2015 and December 31, 2016.

23. **Retention of Individual Payments:** Any Individual Payments to Eligible Settlement Participants who do not execute and return Consent and Release Forms will be retained by Defendants.

24. **Treatment of Individual Payments:** Each Class Member's Individual Payment will be treated as payment for wages, and Defendants will issue to each Class Member an IRS Form W-2 for all amounts paid as wages under this Settlement. Defendants will determine the proper tax withholding amounts on the wage payments in accordance with each Class Member's previously elected wage withholding instructions, and Defendants are responsible for payment of the employer's share of payroll taxes required by law.

25. **Class Representative Payments:** Five Hundred Dollars (\$500.00) of the Total Eligible Settlement Amount will be paid to Representative Plaintiffs Kimberly Glenn and Annie Holloway, in addition to their Individual Payment, in exchange for signing a general mutual release of all claims (proposed and attached as Exhibit C to the Parties' Joint Motion For Approval of Settlement), including all pending claims, against Defendants. Defendants will issue Representative Plaintiffs a Form 1099- Misc. with respect to the Class Representative Payments.

26. **Class Counsel's Attorneys' Fees and Expenses:** Sixteen Thousand Five Hundred Fifty-Three Dollars and Eighty-Nine Cents (\$16,553.89) of the Total Eligible Settlement Amount will be paid to Class Counsel for attorneys' fees, and One Thousand Two Hundred One Dollars and Thirty-Five Cents (\$1,201.35) of the Total Eligible Settlement Amount will be paid to Class Counsel for expenses. Defendants will issue to Class Counsel a Form 1099-Misc. with respect to the attorneys' fees and expenses.

### **RELEASE OF CLAIMS**

27. **Released Claims:** The Class Members will release Defendants from all federal and stated wage-and-hour claims, rights, demands, liabilities and causes of action asserted in Plaintiffs' Complaint, including but not limited to claims for unpaid wages, unpaid overtime compensation, liquidated damages, interest, attorneys' fees, and expenses, pursuant to the Fair Labor Standards Act and Ohio Minimum Fair Wage Standards Act, for the Released Period.

28. **Released Period:** The Released Period for the Class Members shall mean the period between January 1, 2015 and December 31, 2016.

29. **Release of Attorneys' Fees and Expenses:** The payment of attorneys' fees and expenses to Class Counsel includes all of the attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing Court approval of the Settlement, and obtaining a dismissal of the Action. In consideration for these attorneys' fees and expenses, Class Counsel waives any and all claims to any further attorneys' fees and expenses in connection with the Action.

### **APPROVAL AND DISMISSAL OF THE ACTION**

30. **Cooperation:** The Parties will agree to cooperate and take all steps necessary and appropriate to obtain approval of the Settlement by the District Court, to effectuate its terms, and to dismiss the action with prejudice.

31. **Fair, Adequate and Reasonable Settlement:** The Parties will agree that the Settlement is fair, adequate, and reasonable, and will so represent to the District Court.

32. **Joint Motion for Approval of Settlement:** On or before October 28, 2017, the Parties will jointly move the District Court for entry of an order, proposed and attached as Exhibit D to the Parties' Joint Motion For Approval of Settlement, granting final approval of the Settlement, approving the form, content, and method of distribution of the notice to Eligible Settlement Participants, approving the amounts payable to Class Members and Class Counsel, and entering judgment dismissing the Action with prejudice.

33. **Dismissal With Prejudice of the Action:** Upon entry of the District Court's final approval order, the Action shall be dismissed with prejudice and final judgment shall be entered, at Defendant's costs.

### **SETTLEMENT ADMINISTRATION**

34. **Contact Information for Class Members:** Within fifteen (15) days after the District Court grants final approval of the Settlement, Defendants will provide to Class Counsel a spreadsheet containing the names, last known addresses, last known email addresses, and last known phone numbers, to the extent that Defendant has this information, of the Existing Opt-In Party Plaintiff and Eligible Settlement Participants, according to records maintained by Defendants.

35. **Distribution of Notice and Consent and Release Forms:** Class Counsel will distribute the Notice and Consent and Release Forms to the Eligible Settlement Participants via First-Class Mail and email, if available, within twenty-one (21) days after the District Court grants final approval of the Settlement. Class Counsel will perform address updating through the National Change of Address Database before the notice is mailed. If any notices are returned as undeliverable, Class Counsel will advise Defendants' Counsel, and the parties will make reasonable efforts to locate the Class Members and re-send the Notices.

36. **Consent Period and Return of Consent and Release Forms:** In order to receive a payment under this Settlement, the Eligible Settlement Participants must properly sign and return the Consent and Release Form attached as Exhibit B to the Parties' Joint Motion for Approval of Settlement. The Eligible Settlement Participants may return Consent and Release Forms to Class Counsel within thirty (30) days after the mailing of the notice. The Consent and Release Forms must be signed electronically (eSigned) via PDF, postmarked, faxed or emailed to Class Counsel within the thirty (30) day period to be timely.

37. **Filing of Consent and Release Forms:** Upon receipt of the executed Consent and Release Forms from Eligible Settlement Participants, Class Counsel will file them with the Court. Within seven (7) days after the consent period is completed, all of the Eligible Opt-In Party Plaintiffs' Consent and Release Forms must be filed with the District Court.

38. **Filing of Schedule of Individual Payments:** A Schedule of Individual Payments to the Class Members, calculated pursuant to paragraph 21, shall be filed with the Court within seven (7) days after the consent period is completed.

39. **Distribution of Payments:** The Settlement Amount will be paid in installments of \$3,000.00 per month which will be divided on a pro rata basis between Representative Plaintiffs, the Existing Opt-In Party Plaintiffs, the Eligible Settlement Participants who submit consent forms, and Class Counsel.

40. **Distribution of Individual Payments to Class Members:** Defendants will issue the first installment of the Individual Payment checks payable to the Class Members and mail them via First-Class Mail within fourteen (14) days after the close of the Consent Period. Each subsequent installment check will be mailed on the first of the month. Defendant, at its discretion, may elect to issue one check to a Class Member, at the time of the first installment, if the total amount of the payment to the Class Member is \$100.00 or less. If any Individual Payment checks are returned as undeliverable to Defendant, Defendant will mail the checks to Class Counsel who will make reasonable efforts to locate the Plaintiffs and redeliver the checks. Any checks that become lost or void during the (6) month period after each distribution will be reissued to any Class Member upon request and without charge to the Class Member.

40. **Distribution of Payments to Representative Plaintiffs and Class Counsel:** Defendants will issue the first installment checks payable to Representative Plaintiffs for their Individual Payments and Class Representative Payment, and a check payable to each Class Counsel for the attorneys' fees and expenses by mailing them within fourteen (14) days after the

close of the Consent Period. Each subsequent installment check will be mailed on the first of the month.

41. **Unclaimed Payments:** All Individual Payments shall remain negotiable for an 8-month period after the date of each distribution. To the extent there are any Individual Payments to any Class Members that are unclaimed or not distributed, such as undeliverable or uncashed settlement checks, Defendants will advise Class Counsel of such amounts. Any amounts not cashed after eight (8) months of distribution of the settlement checks shall be retained by Defendants.

42. **Late Consent and Release Forms:** In the event Eligible Settlement Participants eSign, postmark, fax or email their Consent and Release forms after the 30-day consent period, Class Counsel will notify Defendants' counsel within three (3) business days. Defendants will decide, in its sole discretion and within three (3) business days of receiving notice from Class Counsel, whether to allow the late Eligible Settlement Participants to become Opt-In Party Plaintiffs and participate in the Settlement. If Defendants decide to allow late Eligible Settlement Participants to become Opt-In Party Plaintiffs and participate in the Settlement, Class Counsel shall immediately file their Consent and Release forms with the Court, causing them to be bound by the Settlement and their claims to thereby be dismissed with prejudice. Defendants will mail the appropriate Settlement Payments directly to them within fourteen (14) days after their Consent and Release forms are filed with the Court.

#### **PARTIES' AUTHORITY**

43. The respective signatories to the Settlement represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

#### **MUTUAL FULL COOPERATION**

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

#### **NO PRIOR ASSIGNMENTS**

45. The Parties and Class Counsel represent, covenant and warrant that they have not directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged in this Settlement.

#### **NO ADMISSION OF LIABILITY**

46. Nothing contained in this Settlement shall constitute or be construed or deemed as an admission of liability, culpability, negligence or wrongdoing on the part of Defendants, and

Defendants deny any such liability.

. Each Party has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

### **NO ADMISSION OF CLASS LIABILITY**

47. The Parties agree that this Agreement does not constitute, shall not be construed to be, and shall not be cited in or be admissible in any proceeding as evidence of a determination or admission that any group of similarly-situated employees exists to maintain a collective action under the FLSA or a class action under Rule 23 of the Federal Rules of Civil Procedure.

### **CONSTRUCTION**

48. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party participated in the drafting of this Settlement.

### **MODIFICATION**

49. This Agreement may not be changed, altered or modified, except in writing, signed by counsel for the Parties, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties. Notwithstanding the foregoing sentences, without further Order of the Court, the Parties may agree in writing to extensions of time to carry out any of the provisions of this Agreement.

### **INTEGRATION CLAUSE**

50. This Settlement contains the entire agreement between the Parties, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and whether by a Party or such Party's legal counsel, relating to the resolution of the Action, are merged in this Settlement. No rights under this Settlement may be waived except in writing signed by the Parties.

### **BINDING ON ASSIGNS**

51. This Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

### **COUNTERPARTS**

52. This Settlement may be executed in counterparts, and may be signed electronically via PDF. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. Electronic and facsimile transmissions of this Settlement shall be deemed originals.

**BREACH**

53. If either Party breaches any of the terms and conditions of this Settlement, the non-breaching Party shall be entitled to reasonable attorneys’ fees and expenses incurred to enforce the terms and conditions contained herein.

**JURISDICTION**

54. The parties will request that the Court expressly retain jurisdiction to enforce the terms of the Settlement, including the notice administration, addition of Opt-In Party Plaintiffs and distribution process.

**CLASS SIGNATORIES**

55. Representative Plaintiffs execute this Settlement on behalf of themselves and in their representative capacity on behalf of the Class Members. It is agreed that it is burdensome to have all of the Class Members execute this Agreement. This Agreement shall have the same force and effect as if each Class Member executed this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

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

KIMBERLY GLENN

\_\_\_\_\_  
Representative Plaintiff, Individually  
and on Behalf of the Class Members

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

ANNIE HOLLOWAY

\_\_\_\_\_  
Representative Plaintiff, Individually  
and on Behalf of the Class Members

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

NIGHTINGALE HOME SUPPORT & CARE, INC.

\_\_\_\_\_

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

Its: \_\_\_\_\_

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

‘S’ GENERATION CENTER, INC.

\_\_\_\_\_

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

Its: \_\_\_\_\_

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

STELLA NSONG

\_\_\_\_\_

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

LORI M. GRIFFIN  
THE LAZZARO LAW FIRM, LLC

\_\_\_\_\_

Class Counsel

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

JENNIFER CORSO  
PETRONZIO SCHNEIER CO. LPA.

\_\_\_\_\_

Defendants’ Counsel

**Appendix 1**

<u>Employee</u>	<u>Status</u>	<u>Total Owed</u>
Kimberly Glenn	Representative Plaintiff	\$1,392.33
Annie Holloway	Representative Plaintiff	\$2,698.57
Charlene Gamble	Existing Opt-In Party Plaintiff <sup>7</sup>	\$998.00
Jennifer Jenkins	Existing Opt-In Party Plaintiff <sup>7</sup>	\$563.75
Dorrett Rittenbaugh	Existing Opt-In Party Plaintiff <sup>7</sup>	\$732.31
Dominic Armstrong	Eligible Settlement Participants	\$425.00
Twillia Austin	Eligible Settlement Participants	\$323.75
Sheryl Bauer	Eligible Settlement Participants	\$555.75
Chamarra Bentley	Eligible Settlement Participants	\$1.25
Debora Brafford	Eligible Settlement Participants	\$622.00
Halimah Burnett	Eligible Settlement Participants	\$19.00
Bertha Cleckley	Eligible Settlement Participants	\$247.25
Angela Cotter	Eligible Settlement Participants	\$1,369.13
Daniel Davis	Eligible Settlement Participants	\$2.75
Margaret Dzikiti	Eligible Settlement Participants	\$6.25
Beulah Gates	Eligible Settlement Participants	\$72.25
Bernie Gerrard	Eligible Settlement Participants	\$21.75
Velma Hooks	Eligible Settlement Participants	\$2,912.44
Shannon Ivy	Eligible Settlement Participants	\$508.75
Drucilla Jenkins	Eligible Settlement Participants	\$22.50
Ashley Johnson	Eligible Settlement Participants	\$22.00
Brittany Johnson	Eligible Settlement Participants	\$160.00
Erica Johnson	Eligible Settlement Participants	\$122.25
Taylor Lebreton	Eligible Settlement Participants	\$20.50
Kristina Mateva	Eligible Settlement Participants	\$250.01
Mackenzie Mathany	Eligible Settlement Participants	\$29.25
Tiffany McDivit	Eligible Settlement Participants	\$43.50
Krystal McDougale	Eligible Settlement Participants	\$45.00
Mattie Miller	Eligible Settlement Participants	\$18.00
Kristina Miteva	Eligible Settlement Participants	\$136.13
Nancy Noce	Eligible Settlement Participants	\$47.50
Candace Patchin	Eligible Settlement Participants	\$136.25
Jo Ellen Premu	Eligible Settlement Participants	\$213.50
Kaylyn Repinski	Eligible Settlement Participants	\$318.50
Stephanie Rivera	Eligible Settlement Participants	\$32.35
Shelby Sangdahl	Eligible Settlement Participants	\$45.00
Cheryl Smith	Eligible Settlement Participants	\$34.00
Meryl Theiss	Eligible Settlement Participants	\$11.25
Imari Valjean	Eligible Settlement Participants	\$65.00