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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JOSE GOMEZ, an individual; DANIEL
GUTIERREZ, an individual; DONNY
TALBOT, an individual; on their own behalf
and on behalf of all others similarly situated,

Plaintiffs,

vs.

LINCARE, INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 05CC00109

Hon. Nancy Wieben Stock
Department CX105

CLASS ACTION

**SETTLEMENT AGREEMENT OF
CLASS ACTION AND RELEASE**

Date Action Filed: May 16, 2005
Trial Date: None

This Settlement Agreement of Class Action and Release (“Settlement Agreement”) is made by and between Plaintiffs Jose Gomez, Daniel Gutierrez and Donny Talbot (“**Plaintiffs**”), on their own behalf and on behalf of the CLASS they seek to represent, and DEFENDANT LINCARE INC. (“**Defendant**” or “**Lincare**”) with regards to the lawsuit filed against Lincare on May 16, 2005, in the Orange County Superior Court, entitled *Jose Gomez, et al. v. Lincare, Inc., et al.*, Case No. 05CC00109 (the “**Action**”) and is subject to the terms and conditions hereof and the approval of the Court.

1 **I. THE ACTION**

2 1. On or about May 16, 2005, **Plaintiffs** filed a class action complaint against
3 **Lincare** in Orange County Superior Court. In their Complaint, **Plaintiffs** alleged causes of
4 action for: (1) failure to pay wages in violation of Industrial Welfare Commission Order No.
5 2-2001 (as amended) and Cal. Code Regs. Title 8 § 1140; (2) failure to pay overtime
6 compensation in violation of Cal. Labor Code §§ 1194 and 1198; (3) unfair competition in
7 violation of Cal. Bus. & Prof. Code § 17200 *et. seq.*; and (4) conversion.

8 2. On or about July 15, 2005, **Plaintiffs** filed a First Amended Complaint against
9 **Lincare** that contained causes of action for: (1) failure to pay wages in violation of
10 Industrial Welfare Commission Order No. 2-2001 (as amended) and Cal. Code Regs. Title 8
11 § 11020; (2) failure to pay overtime compensation in violation of Cal. Labor Code §§ 510,
12 1194 and 1198; (3) failure to provide itemized statements (Labor Code § 226); (4) failure to
13 pay wages upon termination of employment; (5) unfair competition in violation of Cal. Bus.
14 Professions Code § 17200 *et. seq.*; and (6) conversion.

15 3. On or about October 14, 2005, **Plaintiffs** filed a Second Amended Complaint
16 for: (1) failure to pay wages in violation of Industrial Welfare Commission Order No. 2-
17 2001 (as amended) and Cal. Code Regs. Title 8 § 11020; (2) failure to pay overtime
18 compensation in violation of Cal. Labor Code §§510, 1194 and 1198; (3) failure to provide
19 itemized wages statements (Labor Code § 226); (4) failure to pay wages upon termination of
20 employment; and (5) unfair competition in violation of Cal. Bus. & Prof. Code § 17200 *et.*
21 *seq.*;

22 4. On or about December 22, 2006, **Plaintiffs** filed a Third Amended Complaint
23 that contained causes of action for: (1) failure to pay wages in violation of Industrial
24 Welfare Commission Order No. 2-2001 (as amended) and Cal. Code Regs. Title 8 § 11020;
25 (2) failure to provide itemized statements (Labor Code § 226); (3) failure to pay wages upon
26 termination of employment; (4) unfair competition in violation of California Business and
27 Professions Code § 17200 *et. seq.*; and (5) breach of contract.

28 5. On or about April 5, 2007, **Plaintiffs** filed a Fourth Amended Complaint that

1 contained causes of action for: (1) failure to pay wages in violation of Industrial Welfare
2 Commission Order No. 2-2001 (as Amended) and Cal. Code Reg. Title 8 § 11020; (2) failure
3 to provide itemized statements (Labor Code § 226); (3) failure to pay wages upon
4 termination of employment; (4) unfair competition in violation of California Business and
5 Professions Code § 17200 *et. seq.*; (5) breach of express contract; (6) breach of implied-in-
6 fact contract; and (7) promissory estoppel.

7 6. On February 19, 2010, following the Court of Appeal's published decision in
8 Gomez v. Lincare Inc., 173 Cal. App. 4th 508 (2009), **Plaintiffs** filed a Fifth Amended
9 Complaint pursuant to a Stipulation between the **Parties** (as defined in Section II below). In
10 that Complaint, **Plaintiffs** asserted causes of action for: (1) failure to pay overtime wages
11 (Labor Code §§ 510, 1194, and 1198, and CAL. Code REGS., TITLE 8, Section 11040,
12 SUBD. 3); (2) failure to provide itemized statements (Labor Code § 226); (3) failure to pay
13 wages upon termination of employment (Labor Code § 203); (4) unfair competition in
14 violation of California Business and Professions Code § 17200 *et. seq.*; (5) breach of express
15 contract; and (6) promissory estoppel.

16 7. Throughout the **Action**, the **Parties** have diligently sought to represent the
17 interests of their respective clients. They have engaged in substantial discovery as **Lincare**
18 served Requests for Production and other written discovery on **Plaintiffs** and, in response,
19 **Plaintiffs** provided all documents in their possession relating to their work for **Lincare**. In
20 addition, **Lincare** deposed **Plaintiffs** during two sessions for two of the named **Plaintiffs**
21 and three sessions for the other named **Plaintiffs**.

22 8. **Plaintiffs** served four (4) sets of Special Interrogatories and four (4) sets of
23 Requests for Production on **Lincare** and, in response, **Lincare** produced thousands of pages
24 of documents. The PMK of **Lincare** was deposed on two separate occasions as were no
25 fewer than twenty (20) Service Representatives. **Plaintiffs** and **Class Counsel** conducted
26 substantial investigation into the claims and potential damages in this case.

27 9. In addition, **Plaintiffs** opposed demurrers as well as two sets of Summary
28 Adjudication/Judgment Motions against each Plaintiff. After the Court granted **Lincare's**

1 Motions for Summary Judgment and demurrers, **Plaintiffs** appealed and were partially
2 successful in reversing those rulings. **Plaintiffs** filed two class certification motions – one
3 before the appeal and one after the case was remanded – and committed substantial time and
4 resources to opposing a motion to strike class allegations that **Lincare** had filed before
5 obtaining summary judgment.

6 10. The **Parties** arrived at the instant Settlement as a result of arm's length
7 bargaining. The **Parties** engaged in a full day mediation session with professional Mediator
8 Joel Grossman of JAMS. While the first session did not produce a settlement, the **Parties**
9 made progress and continued settlement discussions with the assistance of Mr. Grossman
10 and on their own. After substantial additional negotiations, the **Parties** reached a tentative
11 settlement.

12 11. PLAINTIFFS and **Class Counsel** have diligently pursued an investigation of the
13 **Class Members'** claims against **Lincare**, including (a) analyzing a significant sampling of
14 time records; (b) reviewing **Lincare's** policies; (c) researching the applicable law and the
15 potential defenses; and (d) reviewing information provided by **Lincare** at the mediation.
16 Based on their investigation and experience, **Plaintiffs** and **Class Counsel** are of the opinion
17 that the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
18 the **Class Members** in light of all known facts and circumstances, including the risk of
19 significant delay, the benefits available to the **Class Members** under the Settlement
20 Agreement, and the risk associated with trial.

21 12. **Lincare** denies any liability or wrongdoing of any kind whatsoever associated
22 with the **Action**, and further denies that, for any purpose other than settling the **Action**, the
23 **Action** is appropriate for class or representative treatment. With respect to the **Plaintiffs'**
24 claims, **Lincare** contends, among other things, that **Lincare** has complied at all times with
25 the California Labor Code, the California Business and Professions Code, and all other laws,
26 statutes and orders alleged in the **Action**. This Settlement Agreement is a settlement
27 document and shall be inadmissible in evidence in any proceedings, except as necessary to
28 approve, interpret, or enforce this Settlement Agreement.

1 13. It is the desire of the **Parties** to fully, finally, and forever settle, compromise,
2 and discharge all disputes and claims which exist between them based on or arising out of,
3 or which could have been brought, in the **Action**. In order to achieve a full and complete
4 release of the disputes and claims, execution of the Settlement Agreement by the **Plaintiffs**
5 affects release by each **Class Member** (which includes any legal heirs and/or successors in
6 interest) and includes in its effect all claims or causes of action raised or that could have
7 been raised in the **Action**, including without limitation all claims or causes of action based
8 on, arising out of, or reasonably related to the wage and hour claims or causes of action in
9 the **Action**. The release of claims is subject to California Code Section 1542 and the terms
10 of Section VII, below.

11 14. This Settlement Agreement and the settlement is made in compromise of the
12 disputed claims in the **Action**. Because this is a class action, this Settlement Agreement
13 must receive preliminary and final approval by the Court. Accordingly, the **Parties** enter
14 into this Settlement Agreement on a conditional basis. In the event that the Court does not
15 execute and file a Final Judgment, or the terms of this Settlement Agreement are modified,
16 or in the event that the **Effective Date**, as defined herein, does not occur, this Settlement
17 Agreement shall be deemed null and void *ab initio* and shall be of no force or effect.
18 **Lincare** and the other **Releasees**, as defined below, deny all of **Plaintiffs'** claims as to
19 liability and damages as well as to **Plaintiffs'** class allegations, and do not waive, but rather
20 expressly reserve, all rights to challenge all such claims and allegations upon all procedural
21 and factual grounds, including the assertion of any and all defenses, if the Judgment does not
22 become Final for any reason, or in the event the **Effective Date** does not occur.

23 **II. DEFINITIONS**

24 Unless otherwise defined herein, capitalized or bolded terms used in this Settlement
25 Agreement shall have the meanings set forth below:

- 26 1. **“Class” or “Class Member” or “Class Members”** is defined as follows:

27 All persons who are currently, or were formerly, employed by Lincare
28 in the position of Service Representative in the State of California at
 any time from May 17, 2001 through the date of Preliminary Approval

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of this Settlement Agreement by the Court and who did not sign a release of claims relating to their employment with Lincare.

2.. **“Class Counsel”** means the law firms of Arias Ozzello & Gignac, LLP, Law Offices of David R. Greifinger, and Law Offices of Howard A. Goldstein.

3. **“Class Period”** means May 17, 2001 through the date of the Preliminary Approval of this Settlement Agreement.

4. **“Class Notice of Settlement”** means a form, attached hereto as **Exhibit “1,”** that will be mailed to **Class Members** to inform them of the terms of this Settlement Agreement and their rights and options related thereto.

5. **“Complaint”** means the complaint, as subsequently amended, which was filed by PLAINTIFFS on May 16, 2005, in the Orange County Superior Court, entitled *JOSE GOMEZ, an individual; DANIEL GUTIERREZ, an individual; DONNY TALBOT, an individual; on their own behalf and on behalf of all others similarly situated, vs. LINCARE, INC., a Delaware corporation; and DOES 1 through 100, inclusive, Case No. 05CC00109.*

6. **“Counsel for Lincare”** means the law firm of Van Vleck Turner & Zaller LLP.

7. **“Effective Date”** refers to the date by which the last of the following has occurred: (a) all conditions of settlement as set forth in Section III have been satisfied; (b) the date of entry of Order granting Final Approval of this Settlement Agreement, if no objection to the Settlement is filed; (c) the date of filing of Notice of Withdrawal of any objections filed; (d) the date on which the time for appeals from objections to the Settlement has run, if one or more objections to the Settlement are filed or at the time any and all objections are withdrawn; or (e) the resolution of any appeals filed from any and all orders by this Court granting Final Approval of this Settlement Agreement and/or overruling any objections thereto.

8. **“Enhancement Award”** means the payment to the named **Plaintiffs** for their services to the **Class** as approved by the Court and which shall not exceed, collectively, \$19,500. This amount is in addition to whatever payments they otherwise are entitled to as **Class Members**.

1 9. **“Litigation Costs”** means the amount to be paid to **Class Counsel** for
2 litigation costs actually incurred pursuant to Section IV(H) of this Settlement Agreement and
3 subject to the Court’s approval and which shall not exceed \$200,000.

4 10. **“Lincare”** means Lincare Inc. and its predecessors.

5 11. **“Maximum Settlement Payment”** is \$1,800,000 (One Million, Eight Hundred
6 Thousand Dollars) and represents the maximum amount that **Lincare** is required to pay
7 pursuant to this Settlement Agreement. This amount shall be used to cover all payments of
8 **Class Claims, Settlement Administrator’s** fees and costs, **Litigation Costs**, attorneys’ fees
9 of **Class Counsel, Enhancement Awards**, and all other payments covered by this
10 Settlement Agreement and approved by the Court.

11 12. **“Net Settlement Amount”** means the maximum amount available for
12 distribution to the **Class Members** and payment to governmental authorities for the
13 employee portion of payroll taxes (such as FICA, FUTA, and any other state and local taxes)
14 on payments attributed to wages. The **Net Settlement Amount** is determined by subtracting
15 from the **Settlement Fund** the **Enhancement Awards** and **Settlement Administrator’s** fees
16 and costs.

17 13. **“Opt-Out Period”** refers to the forty (40) day period of time following the
18 date the **Settlement Administrator** mails the **Class Notice of Settlement** to **Class**
19 **Members**, within which any **Class Member** who wishes to be excluded from the settlement
20 may submit a request to be excluded from the settlement.

21 14. **“Settlement Fund”** is \$800,000 (Eight Hundred Thousand Dollars) of the
22 **Maximum Settlement Payment** and represents the maximum sum available for distribution
23 to the **Class Members** and payment to governmental authorities for the employee portion of
24 payroll taxes (such as FICA, FUTA, and any other state and local taxes) on payments
25 attributed to wages, for payment of the court-approved **Enhancement Awards** and for
26 payment of the **Settlement Administrator’s** fees and costs.

27 15. **“Parties”** means **Plaintiffs** and **Lincare**.

28 ///

1 16. “**Qualifying Workweeks**” means the number of weeks each **Class Member**
2 worked as a Service Representative or Senior Service Representative in California during the
3 **Class Period**.

4 17. “**Released Claims**” means the claims the **Class Members** will release under
5 California Civil Code § 1542 and Section VII below.

6 18. “**Releasees**” means Defendant Lincare Inc. and each of its former and present
7 subsidiaries, affiliates and parent companies and each of their past or present officers,
8 directors, shareholders, partners, employees, agents, principles, heirs, representatives,
9 attorneys, accountants, auditors, consultants, insurers and re-insurers and their respective
10 successors and predecessors in interest.

11 19. “**Settlement Administrator**” refers to Desmond, Marcello & Amster, an
12 experienced **Settlement Administrator** that **Class Counsel** and **Counsel for Lincare** have
13 selected to administer this settlement in accordance with the terms of this Settlement
14 Agreement.

15 **III. CONDITIONS PRECEDENT FOR EFFECTIVENESS OF THE SETTLEMENT**

16 It is agreed by and among the **Plaintiffs, Class Members, Class Counsel, Counsel**
17 **for Lincare** and **Lincare** that the **Action** and any claims, damages, or causes of action
18 arising out of or that could have been alleged in the dispute, be settled and compromised as
19 between the **Plaintiffs, Class Members** and **Lincare**, subject to the terms and conditions set
20 forth in this Settlement Agreement, upon the approval of the Superior Court for the County
21 of Orange, California, upon the occurrence of all of the following events:

- 22 (1) Execution of this Settlement Agreement by the Named **Plaintiffs, Lincare,**
23 **Class Counsel** and **Counsel for Lincare**;
- 24 (2) An Order from the Court granting preliminary approval of the Settlement;
- 25 (3) An Order from the Court certifying the Settlement Class for settlement
26 purposes only;
- 27 (4) Mailing of the **Class Notice of Settlement** to **Class Members** using the best
28 practical notice as set forth herein, and providing them with an opportunity to

- 1 object to or request exclusion from the settlement;
- 2 (5) An Order after a final fairness hearing granting final approval of the
- 3 settlement and entering judgment in accordance with said Order;
- 4 (6) Expiration of the period for any objector to file an appeal, writ or other
- 5 appellate proceeding opposing the settlement; and
- 6 (7) Full resolution of any appeal, writ or other appellate proceeding filed in
- 7 opposition to the settlement through either: (a) final and conclusive dismissal
- 8 with no right to pursue further remedies or relief; or (b) upholding of the
- 9 Court’s final judgment with no right to pursue further remedies or relief.

10 **IV. THE SETTLEMENT**

11 Subject to Court approval pursuant to Rule 3.769, *et seq.* of the CALIFORNIA RULES
 12 OF COURT, **Plaintiffs** and **Lincare** have agreed to settle the **Action** by agreement upon the
 13 terms and conditions and for the consideration set forth in this Settlement Agreement.

14 **A. Class Definition:** The **Parties** agree the **Class** is defined as follows:

15 All persons who are currently, or were formerly employed, by Lincare in
 16 the position of Service Representative in the State of California at any
 17 time from May 17, 2001 through the date of Preliminary Approval of this
 18 Settlement Agreement by the Court and who did not sign a release of
 19 claims relating to their employment with Lincare.

20 **B. Maximum Settlement Payment:** Lincare agrees to pay a maximum total amount
 21 not to exceed One Million, Eight Hundred Thousand Dollars (\$1,800,000) (the
 22 “**Maximum Settlement Payment**”) in settlement of the **Action**. The **Maximum**
 23 **Settlement Payment** shall be allocated as set forth below.

24 **C. Settlement Fund:** As part of the **Maximum Settlement Payment** and in
 25 exchange for the Release of Claims, **Lincare** will pay for the benefit of the **Class**, a
 26 **Settlement Fund** in the amount of Eight Hundred Thousand Dollars (\$800,000). The
 27 **Settlement Fund** will be established from the **Maximum Settlement Payment**.
 28 After any court-approved **Enhancement Awards** and the **Settlement**
Administrator’s fees and costs are deducted from the **Settlement Fund**, the **Net**

1 **Settlement Fund** shall be segregated, and ultimately allocated, into three (3) distinct
2 subparts. Each subpart of the **Net Settlement Fund** shall satisfy the claims of the
3 Class.

4 **D. Calculating Class Member Settlement Awards:** Each **Class Member's** share
5 shall be calculated by multiplying the **Net Settlement Fund** by a fraction. The
6 numerator of that fraction shall be the total number of **Qualifying Workweeks** that
7 the **Class Member** worked as a Service Representative at Lincare in California
8 during the **Class Period**, and the denominator shall be the total number of **Qualifying**
9 **Workweeks** that all **Class Members** worked as Service Representatives at **Lincare**
10 in California during the **Class Period**.

11 **E. Allocation of Settlement Awards For Tax Purposes:** The payments to each
12 **Class Member**, as articulated above, shall be allocated as follows for tax purposes:
13 Thirty Percent (30%) shall be attributable to wages and shall be subject to all
14 applicable wage laws including federal, state and local tax withholdings and payroll
15 taxes and shall be reported on a W-2. Separate from **Lincare's** contribution to the
16 **Settlement Fund**, **Lincare** will be responsible for the employer's portion of all
17 applicable employer payroll taxes; Fifty Percent (50%) and Twenty Percent (20%)
18 shall be attributed to interest and penalties respectively, which shall not be subject to
19 withholding and shall be reported on a 1099 form.

20 **F. Settlement Awards Do Not Trigger Additional Benefits:** The Settlement
21 Awards provided for in this Settlement Agreement are solely in connection with this
22 Settlement Agreement, and the **Class Members** are not entitled to any new or
23 additional compensation or benefits as a result of having received the settlement
24 payments (notwithstanding any contrary language or agreement in any benefit or
25 compensation plan document that might have been in effect during the period covered
26 by this Settlement Agreement). All Settlement Awards that are attributable to income
27 shall be deemed to be income to such **Class Members** solely in the year in which
28 such awards are actually received.

1 **G. Attorneys' Fees:** Lincare has agreed to pay as part of the **Maximum**
2 **Settlement Payment** and separate and apart from the **Settlement Fund**, and will not
3 object to **Class Counsel's** application for attorneys' fees incurred in the **Action** in an
4 amount not to exceed \$800,000 (Eight Hundred Thousand Dollars). [**Class Counsel**
5 contends that this amount is only approximately 66% of **Class Counsel's** Lodestar
6 (*i.e.*, \$1,200,000) and they are voluntarily reducing their fee request so this matter
7 can be resolved.] Except as provided in this section, **Plaintiffs, Class Members,** and
8 **Lincare** shall bear their own attorneys' fees and costs.

9 **H. Litigation Costs:** Lincare has agreed to pay as part of the **Maximum**
10 **Settlement Payment**, and will not object to **Class Counsel's** application for,
11 reimbursement of **Class Counsel's** reasonable litigation costs and expenses incurred
12 in the **Action** in an amount not to exceed \$200,000 (Two Hundred Thousand Dollars).

13 **I. Enhancement Awards:** Lincare has agreed to pay and will not object to the
14 application for an enhancement award of up to (\$6,500) Six Thousand Five Hundred
15 Dollars to each of the named **Plaintiffs**. The amounts awarded as **Enhancement**
16 **Awards** will be paid out of the **Settlement Fund** in the time and manner ordered by
17 the Court. The **Enhancement Award** shall be attributed to non-wage income and
18 shall be reported on a 1099 form.

19 **J. Notice & Settlement Administration:** The Parties agree to use Desmond,
20 Marcello & Amster as **Settlement Administrator** to administer this settlement if
21 approved by the Court. The **Settlement Administrator's** fees and expenses will be
22 paid out of the **Settlement Fund**.

23 **K. Non-Reversionary Settlement:** The **Parties** agree that this is a "non-
24 reversionary" settlement. This means that **Lincare** will pay the entire **Maximum**
25 **Settlement Payment**, without reversion or reimbursement of any unclaimed portions
26 of the **Maximum Settlement Payment** to **Lincare**.

27 **L. Non-"Claims-Made" Settlement:** The **Parties** agree that this is a non-"claims-
28 made" settlement. This means that no **Class Member** shall be required to submit a

1 claim or claim form or otherwise prove his or her eligibility for participation in the
2 **Settlement Fund**. Each **Class Member's** eligibility for participation shall be
3 determined solely from the fact and extent of his or her employment with **Lincare** as
4 a Service Representative in California during the **Class Period** as identified by
5 **Lincare's** records.

6 **M. No Tax Advice:** The tax issues for each **Class Member** are unique and each
7 **Class Member** is advised to obtain tax advice from his/her own tax advisor with
8 respect to any payments resulting from this Settlement Agreement.

9 **N. Cy Pres:** Any settlement checks not cashed by any **Class Member** shall be
10 distributed *cy pres* to a not-for-profit entity (or entities) to be chosen by **Plaintiffs**.
11 In choosing this entity (or entities), **Plaintiffs** may consider an entity proposed by
12 **Lincare**, however, this shall not entitle **Lincare** to ask the Court, and **Lincare** will
13 not suggest or ask the Court, to consider **Lincare's** proposed not-for-profit entity, or
14 argue that **Plaintiffs'** choice(s) are somehow different, so long as **Plaintiffs'**
15 choice(s) meet the requirements of a not-for-profit entity as required by the IRS.

16 **V. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

17 **A. Preliminary Approval of Settlement.**

18 As soon as practicable, **Class Counsel** will submit this **Settlement Agreement**
19 to the Court for its Preliminary Approval. Such submission will include such motions,
20 pleadings and evidence as may be required for the Court to determine that this Settlement
21 Agreement is fair, adequate and reasonable, as required by Rule 3.769 of the CALIFORNIA
22 RULES OF COURT.

23 **B. The Settlement Administrator.**

24 **Class Counsel** and **Lincare** have selected Desmond, Marcello & Amster as the
25 **Settlement Administrator**. The **Settlement Administrator** will administer the settlement
26 by, among other things: establishing a Qualified Settlement Fund, printing and distributing
27 the **Class Notice of Settlement** Form, calculating and directing the disbursements from the
28 **Settlement Fund**, calculating the amounts owed to **Class Members** from the Excel

1 Spreadsheet provided by **Lincare**, performing address updates and verifications, handling
2 inquiries about the calculation of individual **Class Member** Settlement awards, handling
3 withholdings of payroll taxes and payment of such taxes to appropriate governmental
4 authorities, processing all mailings and settlement awards, issuing W-2s and 1099s to **Class**
5 **Members** and taxing authorities, and performing other usual and customary duties for
6 administering a class action settlement. The **Settlement Administrator** shall establish a
7 settlement center address and telephone number to receive **Class Members'** inquiries about
8 the **Class Notice of Settlement**. The **Settlement Administrator's** fees and expenses,
9 estimated at \$25,000 shall be paid out of the **Settlement Fund**.

10 C. **Notice to Class Members.**

11 Upon the Court granting Preliminary Approval of this Settlement Agreement,
12 the **Settlement Administrator** shall mail the **Class Notice of Settlement**, in the form
13 attached hereto as **Exhibit "1,"** to each of the **Class Members** at their last-known residence
14 addresses according to **Lincare's** records, as supplemented by reasonable searches to be
15 performed by the **Settlement Administrator**.

16 D. **Cooperation.**

17 The Parties agree to fully cooperate with each other to accomplish the terms of
18 this Settlement Agreement, including but not limited to, taking action as may reasonably be
19 necessary to implement the terms of this Settlement Agreement.

20 E. **Class Notice of Settlement by Mail.**

21 **Lincare** will provide as soon as practicable, but no later than five (5) business
22 days after the Court grants Preliminary Approval of the settlement, to the **Settlement**
23 **Administrator** the following information for each **Class Member** in an Excel spreadsheet:
24 name; social security number; last known address; and number of **Qualifying Workweeks**
25 worked during the **Class Period**. Using this Excel Spreadsheet, the **Settlement**
26 **Administrator** shall initially update this information from the National Change of Address
27 database, to confirm the mailing information. The **Settlement Administrator** shall then,
28 within seven (7) days of receiving the Excel Spreadsheet from **Lincare**, mail the **Class**

1 **Notice of Settlement** and the attached forms by First-Class United States mail to the most
2 recent address known for each **Class Member**.

3 If a **Class Notice of Settlement** is returned as undeliverable by the US Postal
4 Service, and there is another address provided, the **Settlement Administrator** shall
5 immediately re-mail that **Class Notice of Settlement** to the new address. If a Notice is
6 returned as undeliverable and no new address is provided, the **Settlement Administrator**
7 shall perform a skip trace in an attempt to obtain a current address, and if so obtained shall
8 immediately mail a new **Class Notice of Settlement**.

9 The **Class Notice of Settlement** shall include a portion which will allow **Class**
10 **Members** to inform the **Settlement Administrator** of a different address to which any
11 settlement monies should be sent.

12 **F. Opt-Out Request.**

13 Any **Class Member** seeking to be excluded from this Settlement (“**Opt-Out**”)
14 may submit a request to **Opt-Out** to the **Settlement Administrator**. To be valid, the **Opt-**
15 **Out Request** must be signed by the **Class Member** or his or her authorized representative
16 and returned to the **Settlement Administrator**, postmarked or faxed within the **Opt-Out**
17 **Period**, which shall be forty (40) days after the mailing of the **Class Notice of Settlement**.
18 Any **Class Member** who submits a timely request to be excluded from the class settlement
19 shall no longer be a member of the **Class**, shall be barred from objecting to this settlement,
20 and shall receive no benefit from this Settlement Agreement. Any **Opt-Out Request**
21 submitted after the **Opt-Out Period** shall be null and void. **Class Counsel** agrees not to
22 solicit opt-outs directly or indirectly through any means and agrees not to contact **Lincare**
23 employees at **Lincare’s** business locations or during work hours.

24 The **Settlement Administrator** shall notify **Class Counsel** and **Counsel for**
25 **Lincare** of the number of timely opt-outs within five (5) days after the close of the **Opt-Out**
26 **Period**.

27 **G. Lincare’s Right of Rescission.**

28 If five percent or more of the **Class Members** submit **Opt-Out** requests,

1 **Lincare** shall have the right in its sole discretion to rescind and void the Settlement
2 Agreement, before final approval by the Court, by providing a written Notice of Termination
3 to **Class Counsel** within ten (10) business days of the date the **Settlement Administrator**
4 provided notice to **Counsel for Lincare** of the number of timely **Opt-Outs** in accordance
5 with Section V(F) above. If **Lincare** exercises this right, then (1) the preliminary approval
6 order, including any order of class certification, shall be vacated, and (2) the Settlement
7 Agreement and all negotiations, statements and proceedings relating thereto shall be without
8 prejudice to the rights of any of the **Parties**, all of who shall be restored to their respective
9 positions in the **Action** prior to the Settlement Agreement.

10 **H. Objections to Settlement.**

11 **1. Deadline for Objections.**

12 Any **Class Member** wishing to object to the approval of this Settlement must
13 serve on the **Settlement Administrator**, and file with the Court, a written objection to the
14 Settlement by following the procedure set forth in the **Class Notice of Settlement** no later
15 than forty (40) days after the original mailing of the **Class Notice of Settlement**.

16 **2. Failure to Object.**

17 Any **Class Member** who fails to file a timely written objection shall be
18 foreclosed from objecting to this Settlement, unless otherwise ordered by the Court.

19 **3. Responses to Objections.**

20 **Class Counsel** and **Counsel for Lincare** shall file any responses to any
21 written objections submitted to the Court in accordance with this Settlement Agreement at
22 least ten (10) days before the Fairness and Final Approval Hearing.

23 **I. Resolution of Disputes Over Settlement Payment Calculations.**

24 Any **Class member** who disputes the number of workweeks used to
25 calculate his/her share shall notify the **Settlement Administrator** in writing not later
26 than fourteen (14) days prior to the date for the **Final Approval Hearing** and shall
27 produce documentation and explanation of why the workweeks and/or calculation is
28 incorrect. **Lincare's** records shall control unless **Lincare** expressly agrees otherwise in

1 an individual case. The Settlement Administrator shall examine the records and make
2 a final and binding determination of the dispute after first giving not less than seven
3 days' written notice to both Class Counsel and Counsel for Lincare's, and an
4 opportunity for all parties within the seven-day period to submit additional
5 information about the dispute. The Settlement Administrator shall give written notice
6 of its determination to all parties within three days after the seven-day period ends.
7 The determination of the Settlement Administrator shall be final.

8 J. **Declaration of Compliance.**

9 As soon as practicable, but no later than ten (10) days following the close of the
10 deadline for **Class Members** to submit their request to **Opt-Out**, the **Settlement**
11 **Administrator** shall provide **Class Counsel** and **Counsel for Lincare** with a declaration
12 attesting to completion of the notice process set forth in this **Settlement Agreement**,
13 including an explanation of efforts to resend undeliverable notices returned with forwarding
14 addresses, a summary of disputed claims and opt-outs, which declaration shall be filed with
15 the Court by **Class Counsel** along with their papers requesting final approval of the
16 Settlement Agreement. In addition, the Settlement Administrator shall provide to **Lincare** a
17 list of the proposed payments and withholdings to each **Class Member**.

18 K. **Sufficient Notice.**

19 Compliance with the procedures described in this **Settlement Agreement** shall
20 constitute due and sufficient notice to **Class Members** of this settlement and the Final
21 Fairness and Approval Hearing, shall satisfy the requirements of due process, and nothing
22 else shall be required of the named **Plaintiffs**, **Class Counsel**, **Lincare**, **Counsel for**
23 **Lincare**, or the **Settlement Administrator** to provide notice of the Settlement and the Final
24 Fairness and Approval Hearing.

25 L. **Fairness and Final Approval Hearing.**

26 On the date set forth for the Fairness and Final Approval Hearing in the Order
27 granting Preliminary Approval of the Settlement, a Final Approval Hearing shall be held
28 before the Court to consider and determine whether:

- 1 (i) The Court should give this Settlement Agreement Final Approval;
- 2 (ii) **Plaintiffs'** Application for **Enhancement Awards** should be granted;
- 3 (iii) **Class Counsel's** Application for attorneys' fees and **Litigation Costs**
- 4 should be granted; and
- 5 (iv) Whether any timely objections made, and all responses by **Class Counsel**
- 6 and **Counsel for Lincare** to such objections, have any merit.

7 At the Final Approval Hearing, Named **Plaintiffs, Class Counsel,** and

8 **Counsel for Lincare** shall ask the Court to give Final Approval to this Agreement.

9 **M. Time for Disbursement.**

10 1. Within five (5) days after the Court enters an Order granting final approval

11 of the Settlement Agreement and entering judgment in accordance with that Order, Lincare

12 shall transmit the **Maximum Settlement Payment** to the **Settlement Administrator** who

13 will then place those funds in an interest bearing account. All interest earned shall become

14 part of the settlement funds. In the event the **Effective Date** of the Settlement Agreement is

15 not reached for any reason, the settlement funds held in the interest bearing account along

16 with all earned interest shall be returned to **Lincare**.

17 2. Upon the **Effective Date**, the **Settlement Administrator** shall distribute

18 from the Qualified Settlement Fund the settlement funds as follows: Within ten (10) days of

19 the **Effective Date**, the **Settlement Administrator** shall mail a settlement check to each

20 participating **Class Member** for his or her share under the **Settlement Agreement**. In

21 addition, within ten (10) days of the **Effective Date**, the **Settlement Administrator** shall

22 transmit to **Class Counsel** the attorneys' fees and expenses approved by the Court and mail

23 the **Enhancement Awards** to **Plaintiffs** that are approved by the Court. Within ten (10)

24 days of the **Effective Date**, the **Settlement Administrator** shall transmit payment of all

25 withholdings to the appropriate taxing authorities. Within ten (10) days of the expiration of

26 the 90-day period for cashing checks, the **Settlement Administrator** will mail all required

27 W-2 forms and 1099 forms to those **Class Members** that cashed their settlement checks as

28 well as to the applicable governing entities.

1 **N. Deadline for Cashing Checks.**

2 Any check issued to any **Class Member** shall remain valid and negotiable for ninety
3 days from the date of its issuance but thereafter will be distributed to the cy pres charity, or
4 charities, as chosen by **Plaintiffs** and approved by the Court, if not cashed by the **Class**
5 **Member** within that time, in which case such **Class Member's** claim will be deemed null
6 and void and of no further force and effect.

7 **O. No Right of Action.**

8 No person shall have any claim against the **Parties, Class Counsel, Lincare's**
9 **Counsel** or the **Settlement Administrator** based on mailings, distributions and payments
10 made in accordance with this Settlement Agreement or any order of the Court.

11 **P. Taxes/Circular 230 Disclaimer.**

12 Each party to this Agreement acknowledges and agrees that: (1) no provision of
13 this Settlement Agreement, and no written communication or disclosure between or among
14 the parties or their attorneys and other advisors, is or was intended to be, nor shall any such
15 communication or disclosure constitute or be construed or be relied upon as, tax advice
16 within the meaning of the United States Treasury Department Circular 230 (31 CFR Part 10,
17 as amended); (2) the **Parties** (a) have relied exclusively upon his, her, or its own,
18 independent legal and tax advisors for advice (including tax advice) in connection with this
19 Agreement; (b) have not entered into this Agreement based upon the recommendation of any
20 other Party or any attorney or advisor to any other Party; and (c) are not entitled to rely upon
21 any communication or disclosure by any attorney or advisor to any other Party to avoid any
22 tax penalty that may be imposed on the Party; and (3) no attorney or advisor to any other
23 Party has imposed any limitation that protects the confidentiality of any such attorneys' or
24 advisor's tax strategies (regardless of whether such limitation is legally binding) upon
25 disclosure by the Party of the tax treatment or tax structure of any transaction, including any
26 transaction contemplated by this Agreement.

27 ///

28 ///

1 **VI. LIMITATIONS ON USE OF THIS SETTLEMENT**

2 **A. No Admission.**

3 Neither the acceptance nor the performance by **Lincare** of the terms of this
4 Settlement Agreement nor any of the related negotiations or proceedings is or shall be
5 claimed to be, construed as, or deemed a precedent or an admission by **Lincare** of the truth
6 of any allegations in the Complaint or an admission that class treatment is appropriate.

7 **B. Non-Evidentiary Use.**

8 Neither this Settlement Agreement nor any of its terms, nor any statements or
9 conduct in the negotiation or drafting of it, shall be offered or used as evidence by
10 **Plaintiffs**, any **Class Member** (including any individual who requested to be excluded from
11 the **Class**), **Lincare**, or their respective counsel, in this **Action**, except as part of the
12 proceedings to obtain court approval of this Settlement Agreement or in any other
13 proceeding.

14 **C. Nullification.**

15 1. If the Court for any reason does not approve this Settlement Agreement,
16 this **Settlement Agreement** shall be considered null and void and all parties to this
17 Settlement Agreement shall stand in the same position, without prejudice, as if the
18 Settlement Agreement had been neither entered into nor filed with the Court.

19 2. Invalidation of any material portion of this Settlement Agreement shall
20 invalidate this Settlement Agreement in its entirety unless the parties shall agree in writing
21 that the remaining provisions shall remain in full force and effect.

22 **VII. RELEASE**

23 **1. Release As To All Class Members.**

24 As of the **Effective Date**, each member of the **Class** and their successors, assigns,
25 and/or agents, release Defendant **Lincare** and each of its past or present officers, directors,
26 shareholders, employees, agents, principals, heirs, representatives, attorneys, accountants,
27 auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in
28 interest, subsidiaries, affiliates, and parent companies (the "Releasees"), from the "Released

1 Claims.” For purposes of this Settlement, the “Released Claims” are defined as all claims, debts,
2 liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, interest, damages,
3 action or causes of action, raised or that could have been raised in the **Action** under California
4 and/or Federal Law, which relate to the payment of wages, including without limitation, the
5 payment of wages for time spent “on call,” the failure to provide meal periods, the failure to pay
6 overtime, claims for unlawful conversion of property or wages, claims for unlawful, unfair or
7 fraudulent business practices, claims for overtime hours or off-the-clock work, the failure to
8 authorize and permit rest periods, the failure to pay reporting time compensation, the failure to
9 pay final wages due upon termination, the failure to furnish timely and accurate wage statements,
10 the failure to pay minimum wage, and any other claims whatsoever alleged or that could have
11 been alleged in the **Action**, including but not limited to all wage and hour claims, known or
12 unknown, under the California Labor Code, the California Industrial Welfare Commission Wage
13 Orders, California Business and Professions Code sections 17200, et seq., and related Federal
14 Law claims, including all claims under the Fair Labor Standards Act (including all claims for
15 liquidated damages thereunder), which were alleged or could have been alleged based on the
16 same facts giving rise to the **Action** and arising from the **Class Members’** employment by
17 **Lincare**.

18 The **Parties** hereto, including the **Class Members**, stipulate and agree that the
19 consideration paid to the **Class Members** pursuant to this Settlement Agreement compensates the
20 **Plaintiffs** and **Class Members** for all wages and compensation due to them, including
21 compensation for reporting time and overtime; all penalties; all liability for meal and rest period
22 violations; and any other compensation to which they may be entitled pursuant to the California
23 Labor Code, or the applicable Wage Order; and any related penalties, and as such, Defendants are
24 not liable for any penalties pursuant to the Private Attorney General Act (“PAGA”) of 2004. The
25 **Parties** hereto, including the **Plaintiffs**, further stipulate and agree that even if any **Class**
26 **Member** is considered or determined to be an “aggrieved employee” for purposes of the PAGA,
27 said **Class Member** waives any potential right to any penalty prescribed by the PAGA, the
28 California Labor Code or the applicable Wage Order.

1 This release shall not in any way impair or restrict the rights of the **Parties** to
2 enforce the terms of this Settlement Agreement. The **Released Claims** do not include any claims
3 that cannot be released as a matter of law.

4 The **Released Claims** include any unknown related claims that the **Class**
5 **Members** do not know or suspect to exist in their favor at the time of the release with respect to
6 the **Released Claims**, which, if known by them, might have affected their settlement with, and
7 release of, the **Released Parties** or might have affected their decision not to object to this
8 Settlement Agreement. With respect to the **Released Claims**, the **Class Members** stipulate and
9 agree that, upon the **Effective Date**, the **Class Members** shall be deemed to have, and by
10 operation of the Final Judgment and Award Confirmation shall have, expressly waived and
11 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
12 1542 of the California Civil Code, or any other similar provision under federal or state law, which
13 provides:

14 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF
17 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
18 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
19 SETTLEMENT WITH THE DEBTOR.”

20 The **Class Members** may hereafter discover facts in addition to or different from
21 those they now know or believe to be true with respect to the subject matter of the **Released**
22 **Claims**, but upon the **Effective Date**, shall be deemed to have, and by operation of the Final
23 Judgment shall have, fully, finally, and forever settled and released any and all of the **Released**
24 **Claims**, whether known or unknown, suspected or unsuspected, contingent or non-contingent,
25 which now exist, or heretofore have existed, upon any theory of law or equity now existing or
26 coming into existence in the future, including, but not limited to, conduct that is negligent,
27 intentional, with or without malice, or a breach of any duty, law or rule, whether in tort, contract,
28 or for violation of any state or federal statute, rule, or regulation arising out of, relating to, or in
connection with any act or omission by or on the part of any of the **Releasees** committed or
omitted prior to the execution hereof, without regard to the subsequent discovery or existence of

1 such different or additional facts. The **Class Members** agree not to sue or otherwise make a
2 claim against any of the **Releasees** that is based on or related to the **Released Claims**.

3 **2. General Release By Named Plaintiffs.**

4 In addition to the releases made by the **Class Members** and the Settlement **Class**
5 **Members** set forth in Section VII(1) hereof, the Named **Plaintiffs**, as of the **Effective Date**,
6 make the additional following general release of all claims, known or unknown. The Named
7 **Plaintiffs** release the **Releasees** from all claims, demands, rights, liabilities and causes of action
8 of every nature and description whatsoever, known or unknown, asserted or that might have been
9 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation
10 arising out of, relating to, or in connection with any act or omission by or on the part of any of the
11 **Releasees** committed or omitted prior to the execution hereof. (The release set forth in this
12 Section shall be referred to hereinafter as the "General Release").

13 This General Release includes any unknown claims the Named **Plaintiffs**, or each
14 of them, do not know or suspect to exist in his favor at the time of the General Release, which, if
15 known by him, might have affected his settlement with, and release of, the **Releasees**, or might
16 have affected his decision to agree to this Settlement Agreement. With respect to the General
17 Release, each of the Named **Plaintiffs** stipulates and agrees that, upon the **Effective Date**, they
18 shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and
19 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
20 1542 of the California Civil Code, or any other similar provision under federal or state law, which
21 provides:

22 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
23 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF
25 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
26 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
27 SETTLEMENT WITH THE DEBTOR."

28 The Named **Plaintiffs** may hereafter discover facts in addition to or different from those
he now knows or believes to be true with respect to the subject matter of the General Release, but
the Named **Plaintiffs** upon the **Effective Date**, shall be deemed to have, and by operation of the

1 Final Judgment shall have, fully, finally, and forever settled and released any and all of the claims
2 released pursuant to the General Release, whether known or unknown, suspected or unsuspected,
3 contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law
4 or equity now existing or coming into existence in the future, including, but not limited to,
5 conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule,
6 without regard to the subsequent discovery or existence of such different or additional facts.

7 **VIII. MISCELLANEOUS PROVISIONS**

8 **A. Amendments.**

9 The terms and provisions of this Agreement may be amended only by a written
10 agreement which is (1) signed by named **Plaintiffs, Class Counsel, Lincare, and Counsel**
11 **for Lincare**; and (2) approved by the Court.

12 **B. No Inducements.**

13 **Plaintiffs** and **Lincare** each acknowledge that he/it is entering into this
14 Settlement Agreement as a free and voluntary act without duress or undue pressure or
15 influence of any kind or nature whatsoever and that neither **Plaintiffs** nor **Lincare** has relied
16 on any promises, representations or warranties regarding the subject matter hereof other than
17 as set forth in this Settlement Agreement.

18 **C. No Prior Assignment.**

19 **Plaintiffs** hereto represent, covenant, and warrant that they have not directly or
20 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber
21 to any person or entity any portion of any liability, claim, demand, action, cause of action or
22 rights herein released and discharged or arising from the Released claims.

23 **D. Integration Clause.**

24 This Settlement Agreement contains the entire agreement between the parties relating
25 to the settlement and transaction contemplated hereby, and all prior or contemporaneous
26 agreements, understandings, representations, and statements, whether oral or written by a
27 party or such party's legal counsel, are merged herein. No rights hereunder may be waived
28 except in writing.

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E. Binding on Assigns.

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

F. Counterparts.

This Settlement Agreement, and any amendments hereto, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

Dated: January 21, 2011



JOSE GOMEZ

Dated: January 21, 2011



DANIEL GUTIERREZ

Dated: January ____, 2011

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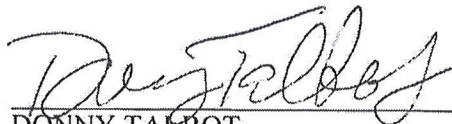
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DANIEL GUTIERREZ

Dated: January 20, 2011



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Dated: January ____, 2011

ARIAS, OZZELLO & GIGNAC, LLP

By: 

MIKE ARIAS
MARK OZZELLO

David R. Greifinger
LAW OFFICES OF DAVID R. GREIFINGER

Howard A. Goldstein
LAW OFFICES OF HOWARD A. GOLDSTEIN

Attorneys for Class Plaintiffs

Dated: January ____, 2011

VAN VLECK TURNER & ZALLER LLP

BY: _____

BRIAN F. VAN VLECK
DANIEL J. TURNER
ANTHONY J. ZALLER

Attorneys for Defendant Lincare Inc.

Dated: January ____, 2011

LINCARE INC.

By: _____

Title: _____