



1 (LANECO), INC., CARE CENTER (LINDA )  
2 VISTA), INC., CARE CENTER (MENLO )  
3 PARK), INC., CARE CENTER )  
4 (PORTHAVEN), INC., CARE CENTER )  
5 (WILLOWBROOK), INC., PCI CARE )  
6 VENTURE I, INC., SUMMERPLACE )  
7 ASSISTED LIVING, LLC, CARE CENTER )  
8 (CAMAS), INC., CARE CENTER )  
9 (CENTRALIA), INC., CARE CENTER )  
10 (COLVILLE), INC., CARE CENTER )  
11 (EDMONDS), INC., CARE CENTER )  
12 (HAZEL DELL), INC., CARE CENTER )  
13 (SULLIVAN PARK), INC., CARE CENTER )  
14 (SUNNYSIDE), INC., CARE CENTER )  
15 (TOPPENISH), INC., GIG HARBOR )  
16 VENTURES, LLC, LIVING COURT )  
17 VENTURES, LLC, ENUMCLAW )  
18 VENTURES II, LLC, AND DOES 1-100, )  
19 INCLUSIVE, )  
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Defendants. )

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1 Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or  
2 “Commission”) and Defendants Prestige Care, Inc., Prestige Senior Living, LLC, Prestige Senior  
3 Management, LLC, Care Center (Anchorage), Inc., Green Valley Ventures, LLC, Lake Havasu  
4 Too, LLC, Sierra Vista Ventures, LLC, Chico Ventures, LLC, Manteca Ventures, LLC,  
5 Marysville Ventures, LLC, Oroville Assisted Living, LLC, Visalia Ventures, LLC, Care Center  
6 (Lewiston), Inc., Caldwell Ventures, LLC, Parkwood Meadows, LLC, Kalispell Ventures, LLC,  
7 Henderson Ventures II, LLC, Care Center (Glisan), Inc., Care Center (Hood River), Inc., Care  
8 Center (Laneco), Inc., Care Center (Linda Vista), Inc., Care Center (Menlo Park), Inc., Care  
9 Center (Porthaven), Inc., Care Center (Willowbrook), Inc., PCI Care Venture I, Inc.,  
10 Summerplace Assisted Living, LLC, Care Center (Camas), Inc., Care Center (Centralia), Inc.,  
11 Care Center (Edmonds), Inc., Care Center (Hazel Dell), Inc., Care Center (Sullivan Park), Inc.,  
12 Care Center (Sunnyside), Inc., Care Center (Toppenish), Inc., Gig Harbor Ventures, LLC, Living  
13 Court Ventures, LLC, and Enumclaw Ventures II, LLC (collectively, “Defendants”) hereby  
14 stipulate and agree to entry of this Consent Decree (“Decree”) to resolve the Commission’s  
15 Complaint against Defendants in U.S. Equal Employment Opportunity Commission v. Prestige  
16 Care, Inc. et al., Case No. 1:17-cv-01299-AWI-SAB (E.D. Cal.) (the “Action”).

17 On September 28, 2017, the Commission filed the Action in the United States District  
18 Court, Eastern District of California, for violations of the Americans with Disabilities Act of  
19 1990, as amended, 42 U.S.C. § 12101 *et seq.* (the “ADA”), on behalf of a class of aggrieved  
20 individuals, including Charging Party Mitchell Miller, individual employees named in the  
21 Complaint, and unnamed, similarly-situated class members. The Action alleges that Defendants  
22 maintain policies and practices that required that all employees be “100% fit for duty”/“100%  
23 healed” and perform “100% of job duties,” and that Defendants fail to provide leave as an  
24 accommodation except that which qualified as personal leave or under the Family and Medical  
25 Leave Act (“FMLA”). The Action brings three counts under the ADA, alleging: (1) that  
26 Defendants’ practices constitute an unlawful qualification standard because it barred a class of  
27 qualified individuals with disabilities from working unless they could perform all job functions,  
28 including marginal job functions, without a reasonable accommodation; (2) that Defendants fail

1 to provide reasonable accommodations to a class of qualified individuals with disabilities  
2 pursuant to these policies and practices; and (3) that Defendants specifically failed to hire  
3 Charging Party Mitchell Miller because of his disability and/or because it regarded him as  
4 disabled. Defendants deny each of the claims and allegations in the Complaint.

5 **I. PURPOSES AND SCOPE OF THE DECREE**

6 A. The EEOC and Defendants (collectively, the "Parties") agree to conclude fully  
7 and finally all claims arising out of the Action and Mr. Miller's charge of discrimination filed  
8 with the EEOC by entry of the Consent Decree ("Decree"). The Decree is binding on and  
9 enforceable against Defendants and their subsidiaries, successors (as limited as set forth in  
10 Section I.F below), acquired entities (but only to the extent defined and limited as set forth in  
11 Section I.G below), and assigns, to the extent permitted by law.

12 B. The Parties have entered into the Decree for the following purposes:

- 13 1. To further the objectives of equal employment opportunity as set forth in  
14 the ADA;
  - 15 2. To provide appropriate monetary and injunctive relief;
  - 16 3. To ensure a work environment free from discrimination, especially as it  
17 relates to disability discrimination;
  - 18 4. To ensure Defendants' policies, procedures, and practices comply with  
19 and achieve the objectives of the ADA;
  - 20 5. To ensure Defendants' managers and employees understand their rights  
21 and responsibilities under the ADA and Defendants' policies, procedures, and practices;
  - 22 6. To ensure Defendants' managers and employees have access to  
23 appropriate and effective mechanisms for handling requests for reasonable  
24 accommodation and complaints of disability discrimination in the workplace;
  - 25 7. To ensure appropriate record keeping, reporting, and monitoring; and
  - 26 8. To avoid the expensive and protracted costs incident to litigation of the  
27 Action.
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1 C. The Decree will be implemented by Defendants and Defendants' facilities on a  
2 nationwide basis, including facilities operated as a corporate entity not named as a defendant in  
3 the Action but for which Defendant(s) participate in, approve and/or ratify the facilities' policies,  
4 procedures, and practices regarding employment discrimination on the basis of disability.

5 D. The Decree is not a finding on the merits of this case and shall not be construed as  
6 an admission by Defendants of a violation of the ADA.

7 E. The Decree in no way affects the EEOC's right to bring, process, investigate or  
8 litigate other charges that may be in existence or may later arise against one or more Defendants  
9 in accordance with EEOC procedures.

10 F. As used in this Decree, the term "successor" is limited as follows:

11 1. This Decree shall not be applicable to nor shall it be binding on any  
12 individual facility, employer, entity or operation<sup>1</sup> which is sold, leased, conveyed, or  
13 otherwise transferred to an entity or person that is (1) not named as a Defendant in the  
14 Action as of the date of the entry of this Decree; or (2) that is not under the substantial  
15 ownership or control of a party named as a Defendant in this Action as of the date of  
16 entry of this Decree. This Section I.F.1 does *not* apply to Prestige Care, Inc., Prestige  
17 Senior Living, LLC, and Prestige Senior Management, LLC.

18 2. The injunctive relief provisions of this Decree, set forth in Section VIII in  
19 its entirety, Section IX in its entirety, Section X.A, Section X.B, and Section X.C, shall  
20 not be applicable to nor shall they be binding on successors to Prestige Care, Inc.,  
21 Prestige Senior Living, LLC, and Prestige Senior Management, LLC after three (3)  
22 years from the Effective Date or with respect to the sale conveyance or transfer of all or  
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25 <sup>1</sup> Care Center (Anchorage), Inc., Green Valley Ventures, LLC, Lake Havasu Too, LLC, Sierra Vista Ventures, LLC,  
26 Chico Ventures, LLC, Manteca Ventures, LLC, Marysville Ventures, LLC, Oroville Assisted Living, LLC, Visalia  
27 Ventures, LLC, Care Center (Lewiston), Inc., Caldwell Ventures, LLC, Parkwood Meadows, LLC, Kalispell  
28 Ventures, LLC, Henderson Ventures II, LLC, Care Center (Glisan), Inc., Care Center (Hood River), Inc., Care  
Center (Laneco), Inc., Care Center (Linda Vista), Inc., Care Center (Menlo Park), Inc., Care Center (Porthaven),  
Inc., Care Center (Willowbrook), Inc., PCI Care Venture I, Inc., Summerplace Assisted Living, LLC, Care Center  
(Camas), Inc., Care Center (Centralia), Inc., Care Center (Edmonds), Inc., Care Center (Hazel Dell), Inc., Care  
Center (Sullivan Park), Inc., Care Center (Sunnyside), Inc., Care Center (Toppenish), Inc., Gig Harbor Ventures,  
LLC, Living Court Ventures, LLC, and Enumclaw Ventures II, LLC.

1 substantially all of it or their assets which is closed or otherwise consummated more  
2 than three (3) years after the Effective Date, the date of such closing or other  
3 consummation, whichever is later. Prestige Care, Inc., Prestige Senior Living, LLC, and  
4 Prestige Senior Management, LLC shall provide the EEOC with notice of such a  
5 transaction no later than thirty (30) day prior to such closing or other consummation.

6 3. The monetary relief provisions of this Decree, set forth in Section VII in  
7 its entirety, shall be applicable to and shall be binding on Prestige Care, Inc., Prestige  
8 Senior Living, LLC, and Prestige Senior Living, LLC, and their subsidiaries, legal  
9 successors, and assigns, for the Term of the Decree.

10 4. Nothing contained in Sections I.F.1, I.F.2, and I.F.3 above shall limit or  
11 restrict the reduction in the duration of the Decree as provided in Sections IV.B and  
12 VII.A.1.c below.

13 G. This Decree shall apply to facilities acquired by a party named as a Defendant in  
14 the Action as of the date this Decree is entered (or a successor thereto, as limited as set forth in  
15 Section I.F above), and for a period of two years thereafter. When a facility is acquired during  
16 this two-year period, the Decree shall be of no force or effect until three months have elapsed  
17 after the defendant has assumed operational control of the facility. This three-month period is  
18 provided to allow the Defendant to implement such changes as may be required in the  
19 management of the facility to comply with this Decree. Facilities acquired more than two years  
20 after entry of the Decree will not be covered by this Decree.

## 21 **II. RELEASE OF CLAIMS**

22 A. The Decree fully and completely resolves all issues, claims and allegations raised  
23 by the EEOC against Defendants in the Action, including those asserted by the EEOC for and on  
24 behalf of all claimants, unidentified and not yet identified, in the Action.

25 B. Nothing in the Decree shall be construed to limit or reduce Defendants'  
26 obligations to comply fully with the ADA or any other federal employment statute.

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1 C. Nothing in the Decree shall be construed to preclude any party from bringing suit  
2 to enforce the Decree in the event that any party hereto fails to perform the promises and  
3 representations contained herein.

4 **III. JURISDICTION AND AUTHORITY OF THE COURT**

5 A. The Court has jurisdiction over the Parties and the subject matter of the Action.  
6 The Action asserts claims that, if proven, would authorize the Court to grant the equitable relief  
7 set forth in the Decree.

8 B. The terms and provisions of the Decree are fair and reasonable.

9 C. The Decree conforms with the Federal Rules of Civil Procedure and ADA and is  
10 not in derogation of the rights or privileges of any person.

11 D. The Court shall retain jurisdiction of the Action during the duration of the Decree  
12 for the purposes of entering any order, judgment, or decree that may be necessary to implement  
13 the relief provided herein.

14 **IV. EFFECTIVE DATE AND DURATION OF DECREE**

15 A. The provisions and agreements contained herein are effective immediately upon  
16 the date which the Decree is entered by the Court (the "Effective Date").

17 B. Except as otherwise provided herein, the Decree shall remain in effect for five (5)  
18 years measured from the Effective Date (the "Term").

19 **V. MODIFICATION AND SEVERABILITY**

20 A. The Decree constitutes the complete understanding of the Parties with respect to  
21 the matters contained herein. No waiver, modification, or amendment of any provision of the  
22 Decree will be effective unless made in writing and authorized by a representative of each of the  
23 Parties.

24 B. If one or more of the provisions of the Decree are rendered unlawful or  
25 unenforceable, the Parties shall make good faith efforts to agree upon appropriate amendments to  
26 the Decree in order to effectuate the purposes of the Decree. In any event, the remaining  
27 provisions will remain in full force and effect unless the purposes of the Decree cannot, despite  
28 the Parties' best efforts, be achieved.



1 C. By mutual agreement of the Parties and with the approval of the Court, the Decree  
2 may be amended or modified in the interests of justice and fairness in order to effectuate the  
3 provisions of the Decree.

4 **VI. COMPLIANCE AND DISPUTE RESOLUTION**

5 A. The Parties expressly agree that if the EEOC has reason to believe that one or  
6 more Defendants have failed to comply with any provision of this Decree, the EEOC may bring  
7 an action before this Court to enforce the Decree. Prior to initiating such action, the EEOC will  
8 notify Defendant(s) and/or its/their legal counsel of record, in writing, of the nature of the  
9 dispute. This notice shall specify the particular provision(s) of the Decree that the EEOC  
10 believes has been breached. Absent a showing that the delay will cause irreparable harm, the  
11 Parties shall have forty-five (45) days<sup>2</sup> to attempt to resolve or cure any alleged non-monetary  
12 breach and shall have fourteen (14) days to attempt to resolve or cure any alleged monetary  
13 breach. If a Defendant identifies an issue, claim or dispute concerning the administration of this  
14 Decree, or the actions of the EEOC under the Decree, it may notify the EEOC of the existence of  
15 such a dispute, and the Parties shall have forty-five (45) days to attempt to resolve or cure any  
16 such issue, claim or dispute.

17 B. The Parties agree to cooperate with each other and use their best efforts to resolve  
18 any dispute that arises under this section.

19 C. After forty-five (45) days have passed with respect to any alleged non-monetary  
20 breach, or fourteen (14) days have passed with respect to any alleged monetary breach, if the  
21 Parties have reached no resolution or agreement to extend the time further, either Party may  
22 petition this Court for resolution of the dispute, seeking all available relief, including an  
23 extension of the Term of the Decree and any other relief the court deems appropriate.

24 D. If the EEOC and/or Defendant(s) has reason to believe that the Claims  
25 Administrator or the EEO Monitor has failed to fulfill any of her or his obligations under this  
26 Decree, it/they shall notify the other Party(ies) and/or its/their legal counsel of record, in writing,  
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<sup>2</sup> Time periods specified in the Decree shall be computed in accordance with Fed. R. Civ. P. 6(a).

1 of the nature of the alleged failure. This notification shall specify the particular provision(s) of  
2 the Decree that the Party(ies) believe the Claims Administrator or EEO Monitor has failed to  
3 fulfill. The Parties shall then have thirty (30) days during which they shall cooperate and attempt  
4 to ensure the Claims Administrator or EEO Monitor cures the alleged failure. If the Parties are  
5 unable to ensure that the Claims Administrator or EEO Monitor has cured or will cure the  
6 alleged failure after those thirty (30) days, they shall replace the Claims Administrator in  
7 accordance with Section VII.B.1 or the EEO Monitor in accordance with Section IX.B.1.

8 **VII. MONETARY RELIEF**

9 A. In settlement of this lawsuit, Defendants shall pay a total of \$2,000,000.00 (two  
10 million dollars and zero cents) (the "Damages Fund"). The Damages Fund is inclusive of all  
11 back-pay, compensatory damages, and punitive damages monetary relief, as further defined and  
12 specified below. The EEOC has full and complete discretion under the terms of the Decree to  
13 determine who is a claimant and to determine the amount and characterization of payment, if  
14 any, to the Charging Party and claimants from the Damages Fund.

15 I. Defendants' Deposit of Damages Fund Monies in the Escrow Account

16 a. No later than the Effective Date, Defendants shall create an escrow  
17 account for the deposit of the Damages Fund monies (the "Escrow Account").

18 b. Defendants shall make deposits in the Escrow Account as follows:

19 i. No later than January 31, 2020, Defendants shall make a  
20 deposit of no less \$400,000.00 into the Escrow Account or, if the Escrow  
21 Account has not been established, in the trust account of its counsel of  
22 record; and Defendants' counsel of record shall transfer the \$400,000.00  
23 into the Escrow Account no later than the Effective Date;

24 ii. No later than January 31, 2021, Defendants shall make a  
25 deposit of no less \$400,000.00 into the Escrow Account;

26 iii. No later than January 31, 2022, Defendants shall make a  
27 deposit of no less \$400,000.00 into the Escrow Account;

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1                   iv.     No later than January 31, 2023, Defendants shall make a  
2                   deposit of no less \$400,000.00 into the Escrow Account;

3                   v.     No later than January 31, 2024, Defendants shall make a  
4                   deposit of no less \$400,000.00 into the Escrow Account.

5                   c.     In the event that Defendants deposit the entirety of the Damages  
6                   Fund into the Escrow Account prior to January 31, 2024, the Term of the Decree  
7                   shall be reduced by the number of months the final deposit is made in advance of  
8                   the due date for the final deposit (January 31, 2024), but in no event, will the  
9                   Term be reduced by more than twenty-four (24) months. For example, if  
10                  Defendants make a final deposit satisfying the Damages Fund on January 1, 2023,  
11                  the Term of the Decree shall be reduced by twelve (12) months.

12                  d.     Within seven (7) days of making any deposit in the Escrow  
13                  Account, Defendants shall notify the EEOC of the amount of the deposit and the  
14                  current balance of the Escrow Account. Within forty-five (45) days of making  
15                  any deposit in the Escrow Account, Defendants shall provide the EEOC with the  
16                  most recent account statement for the Escrow Account reflecting the deposit.

17                  e.     Any expenses, costs or fees associated with the opening,  
18                  maintenance, or administration of the Escrow Account shall be borne by  
19                  Defendants and not subtracted from the funds deposited therein or the Damages  
20                  Fund.

21                  2.     Monetary Relief for Charging Party and Identified Claimants

22                  a.     In settlement of the claims of Charging Party Mitchell Miller and  
23                  the claimants the EEOC has presently identified to Defendants (collectively  
24                  referred to as the "Identified Claimants"), the EEOC has full and complete  
25                  discretion under the terms of the Decree to determine the amount and  
26                  characterization of payment, if any, to an Identified Claimant. The EEOC will  
27                  make a determination of eligibility of any claimant to receive any monies based  
28                  upon information the EEOC receives from the Claims Forms and any other

1 information it has available to it making an eligibility determination.

2 b. The EEOC shall provide to Defendants a distribution list  
3 designating each Identified Claimant's portion and amount of monetary relief, if  
4 any, as well as the name and address to which each Identified Claimant's portion  
5 and amount of monetary relief shall be delivered.

6 c. Within thirty (30) days of receiving the EEOC's Identified  
7 Claimants distribution list, Defendants shall have a check payable from the  
8 Escrow Account sent, via first class mail, in the amount designated in the EEOC's  
9 distribution list, to the Identified Claimants. Within thirty (30) days of mailing  
10 the aforementioned payments, Defendants shall submit copies of the checks and  
11 any related correspondence to the EEOC, as well as a report regarding the mailing  
12 of the checks to the EEOC. The report shall show the amount of the check, the  
13 date the check was mailed, the person to whom the check was mailed, and the  
14 address to which the check was mailed. Each check will remain valid for 180  
15 days. If any such check is returned or known to be lost or destroyed, or not  
16 negotiated within 180 days, Defendants shall notify the EEOC and cooperate with  
17 the EEOC in reissuing the check. Defendants will not be obligated to reissue a  
18 check to a Claimant more than one (1) time. The Parties shall cooperate to  
19 endeavor that all Claimants receive the amounts due to them.

20 d. Payments to the Identified Claimants will be made in amounts to  
21 be designated at the full and complete discretion of the EEOC, which amounts  
22 will be paid to each by one check issued for damages in the form of compensatory  
23 damages, and for this payment Defendants, in the ordinary course, shall prepare  
24 and distribute 1099 tax reporting forms to the Identified Claimants, if required by  
25 law, and shall make any appropriate reports to the Internal Revenue Service and  
26 other tax authorities. Within thirty (30) days of the issuance of any 1099,  
27 Defendants shall provide copies and any related correspondence to the EEOC.  
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1                    3.    Monetary Relief for Unidentified Claimants

2                    a.       Monetary relief shall also be distributed to additional claimants  
3                    who are not presently identified to Defendants (the "Previously Unidentified  
4                    Claimants"). These claimants will be identified through the claims administration  
5                    process set forth in Section VII.B below. The EEOC has full and complete  
6                    discretion under the terms of the Decree to determine the amount and  
7                    characterization of payment, if any, to a Previously Unidentified Claimant.

8                    b.       Payment, if any, to Previously Unidentified Claimants shall be  
9                    triggered by the EEOC's issuance to Defendants of a Previously Unidentified  
10                    Claimants distribution list designating Previously Unidentified Claimants'  
11                    amounts and designations of monetary relief as well as the names and addresses  
12                    to which the checks are to be delivered. The EEOC may continue to issue  
13                    Previously Unidentified Claimants distribution lists until the Damages Fund is  
14                    exhausted, but in no event, not later than the end of the Term of the Decree.

15                    c.       Within thirty (30) days of receiving a Previously Unidentified  
16                    Claimants distribution list, Defendants shall have checks payable from the Escrow  
17                    Account sent, via first class mail, in the amounts designated in the Previously  
18                    Unidentified Claimants distribution list to the Previously Unidentified Claimant at  
19                    the addresses provided in the distribution list. Within thirty (30) days of mailing  
20                    the aforementioned payments, Defendants shall submit copies of the checks and  
21                    any related correspondence as well as a report regarding the mailing of the checks  
22                    to the EEOC. The report shall show the amount of the check, the date the check  
23                    was mailed, the person to whom the check was mailed, and the address to which  
24                    the check was mailed. Each check will remain valid for 180 days. If any such  
25                    check is returned or known to be lost or destroyed, or not negotiated within 180  
26                    days, Defendants shall notify the EEOC and cooperate with the EEOC in  
27                    reissuing the check. Defendants will not be obligated to reissue a check to a  
28                    Claimant more than one (1) time, unless the need to reissue the check resulted

1 from Defendant(s)' error. The Parties shall cooperate to endeavor that all  
2 Claimants receive the amounts due to them.

3 d. Payments to the Previously Unidentified Claimants will be made in  
4 amounts to be designated at the full and complete discretion of the EEOC, which  
5 amounts will be paid to each by one check for damages in the form of  
6 compensatory damages, if any, and for this payment Defendants, in the ordinary  
7 course, shall prepare and distribute 1099 tax reporting forms to the Previously  
8 Unidentified Claimants, if required by law, and shall make any appropriate  
9 reports to the Internal Revenue Service and other tax authorities. Within thirty  
10 (30) days of the issuance of any 1099 form, Defendants shall provide copies and  
11 any related correspondence to the EEOC.

12 4. Presently Unavailable Funds in the Escrow Account

13 a. Due to Defendants' schedule of deposits of damages fund monies  
14 in the Escrow Account set forth in Section VII.A.1.b above, the EEOC may  
15 determine that Identified Claimants and/or Previously Unidentified Claimants are  
16 due amounts that are not presently available in the Escrow Account.

17 b. In addition to the distribution lists described above, the EEOC  
18 may, after Defendants make a deposit into the Escrow Account, issue additional  
19 distributions lists designating additional payments to be made in accordance with  
20 the procedures above to Claimants who previously received payments.

21 c. In the event that the EEOC issues a distribution list that specifies  
22 amounts due to Claimants that exceed the funds presently available in the Escrow  
23 Account, Defendants shall promptly notify the EEOC of the amount of the  
24 overage, and the EEOC will reissue the distribution list with revised amounts.

25 B. Claims Administration

26 1. Claims Administrator. Within thirty (30) days of the Effective Date,  
27 Defendants shall hire and appoint a specific professional individual or organization  
28 ("Claims Administrator"), approved by the EEOC, to oversee the payment of the

1 Damages as designated by the EEOC pursuant to the Decree. If the Claims  
2 Administrator initially appointed by Defendants thereafter declines to serve or to carry  
3 out its duties under the Decree, Defendants shall, within fourteen (14) days, notify the  
4 EEOC in writing of the need for a replacement Claims Administrator, and within ten  
5 (10) days the EEOC shall provide Defendants with three (3) new Claims Administrators  
6 from which Defendants shall select a replacement. Defendants shall advise the Claims  
7 Administrator (and any replacement for her or him) that she or he has access to the  
8 EEOC and that she or he shall work with the EEOC to identify eligible Claimants in  
9 accordance with the EEOC's criteria.

10 2. Potential Claimant List. Within sixty (60) days of the Effective Date,  
11 Defendants shall provide to the Claims Administrator a list of all employees who at any  
12 time between July 15, 2014 and December 31, 2018 were terminated, either voluntarily  
13 or involuntarily, who had a mental or physical impairment or condition, of which a  
14 Defendant knew (as defined below) at the time of his/her termination. The list provided  
15 by Defendants shall include each employee's and/or former employee's last known  
16 address, phone number(s), and email address.

17 a. As used in this Section VII.B.2, "a mental or physical impairment  
18 or condition, of which a Defendant knew" includes individuals who, within one  
19 year of their separation from employment, filed a written claim for workers'  
20 compensation benefits or short-term disability benefits, requested medical leave  
21 pursuant to the Family and Medical Leave Act or similar state laws, requested  
22 accommodation of a mental and/or physical impairment, or whose personnel  
23 records maintained by the Defendant reflect that the individual had a disability  
24 within the meaning the Americans With Disabilities Act. Defendants may limit  
25 their search for this information to the following: (1) personnel records  
26 maintained by the Defendants in the course and scope of its business which  
27 reflect, on their face, that the individual had a physical or mental impairment or  
28 condition; (2) filings of workers' compensation claims as evidenced by the

1 submission of a California DWC 1 or similar form in another state concerning the  
2 Defendant who was his/her employer within the 12 months preceding the  
3 termination; (3) entries of recordable injuries in an OSHA 300 log within 12  
4 months preceding of the date of termination; (4) filings of claims for disability  
5 benefits with the California Employment Development Department, or similar  
6 state agency, of which the Defendants had actual notice, within 12 months  
7 preceding the termination; (5) submitted a Department of Labor Form WH 380E  
8 or similar form under similar state laws, of which the Defendants had actual  
9 notice, within 12 months preceding the termination.

10 b. EEOC retains sole discretion to identify Previously Unidentified  
11 Claimant(s) based on information available to it, including by not limited to the  
12 Potential Claimant List, and any monetary amounts for which each may be  
13 eligible, and nothing in this section or any other precludes the EEOC from  
14 determining that a Previously Unidentified Claimant is an eligible claimant.

15 3. Claims Notice Process. The EEOC shall develop a questionnaire and  
16 notice letter template, and it will provide them to the Claims Administrator. The EEOC  
17 will provide written notice to Defendants' counsel that it has provided said questionnaire  
18 and notice letter as required. Within thirty (30) days of receipt by the Claims  
19 Administrator of the EEOC's questionnaire and notice letter, the Claims Administrator  
20 shall, for each employee and/or former employee identified under in Section VII.B.2  
21 above, provide notice as follows:

22 a. Send a questionnaire and notice letter (as provided by the EEOC)  
23 via first class mail to the most recent address of the Previously Unidentified  
24 Claimant as determined by the Claims Administrator through research and best  
25 efforts, including a search of a database such as Accurint (i) notifying the  
26 Previously Unidentified Claimant of his or her ability to file a claim for monetary  
27 relief and re-apply for employment; (ii) providing the Previously Unidentified  
28 Claimant with instructions on how to file a claim on-line with the Claims



1 Administrator; (iii) providing the Previously Unidentified Claimant with the  
2 opportunity to seek assistance in completing the on-line claim; and (iv) enclosing  
3 a claim form or forms.

4 b. Every forty-five (45) days following receipt by the Claims  
5 Administrator of the EEOC's initial questionnaire and notice letter, the Claims  
6 Administrator shall provide to the EEOC notification that the Claims  
7 Administrator mailed a questionnaire and notice letter to each Previously  
8 Unidentified Claimant. This notification shall include the name and address of  
9 each Previously Unidentified Claimant(s) to which the questionnaire and notice  
10 letter were sent.

11 c. Should any correspondence to a Previously Unidentified Claimant  
12 from the Claims Administrator be returned undeliverable, within twenty-one (21)  
13 days the Claims Administrator shall notify the EEOC that the correspondence has  
14 been returned. The EEOC shall thereafter undertake any efforts it deems  
15 appropriate to locate the Previously Unidentified Claimant. If the EEOC is able  
16 to procure another address or means of contact for the Previously Unidentified  
17 Claimant, it shall provide this information to the Claims Administrator and the  
18 Claims Administrator will make one additional attempt to provide the  
19 questionnaire and notice letter to the Previously Unidentified Claimant.

20 4. Claims Distribution Process.

21 a. At forty-five (45) day intervals after mailing the first group of  
22 questionnaires and notice letters, the Claims Administrator shall forward to the  
23 EEOC any submitted claim forms received from any Previously Unidentified  
24 Claimant. The Claims Administrator shall provide Defendants and the EEOC  
25 electronic access to the claims forms filed online.

26 b. The EEOC shall have the sole discretion to make the final  
27 determination whether a potential Previously Unidentified Claimant is an eligible  
28 claimant. The EEOC shall have the sole discretion to designate the amount of the

1 Damages Fund to be distributed to each eligible claimant. The EEOC will make a  
2 determination of eligibility based upon information it receives from the claims  
3 forms and any other information it has available to it making an eligibility  
4 determination.

5 c. On a monthly basis after issuance of the first Distribution List, the  
6 Claims Administrator shall provide the EEOC with a copy of each canceled check  
7 issued in accordance with Section VII.A.3.c above, and identify any check  
8 returned, known to be lost or destroyed, or not negotiated within 180 days of  
9 issuance, to enable the Parties to track the balance of the Damages Fund.

10 d. The EEOC may subsequently issue additional distribution list(s),  
11 as necessitated by reasons including but not limited to, receipt of additional  
12 claims forms or further notice from Defendants or their Claims Administrator that  
13 any check issued to an eligible Claimant was returned, known to be lost or  
14 destroyed, or not negotiated within 180 days after issuance.

15 e. On a quarterly basis, continuing until the Damages Fund is  
16 exhausted, the Claims Administrator will notify the EEOC of any remaining  
17 balance in the Class Fund.

18 f. The EEOC may subsequently issue additional distribution list(s)  
19 for a period of one (1) year and nine months from the final deposit of settlement  
20 monies by Defendants.

21 g. Prior to the expiration of the Decree, the EEOC shall designate a  
22 "Final Distribution List" which may include, in addition to any additional eligible  
23 claimants to receive payments, any additional amounts to be paid to eligible  
24 claimants who previously received payments.

25 h. No further distribution list shall be issued by the EEOC after the  
26 Final Distribution List is provided to the Claims Administrator. However, if any  
27 such check issued in accordance with the Final Distribution List is returned,  
28 known to be lost or destroyed, or not negotiated within 180 days, the Claims

1 Administrator shall notify the EEOC and cooperate with the EEOC in reissuing  
2 the check. There is no obligation to reissue a check more than one (1) time, unless  
3 the need to reissue the check resulted from Defendant(s)'s error. The Parties shall  
4 cooperate to endeavor that all Claimants receive the amounts due to them.

5 i. No fewer than 180 days and no more than one year after issuance  
6 of the payments in accordance with the Final Distribution List, any remaining  
7 monies in the Class Fund shall be donated to a charity that promotes equal  
8 opportunities for people with disabilities. The monies will be donated under the  
9 name of Prestige Care, Inc. pursuant to this term of the Decree. Notice shall be  
10 given to the EEOC that payment was made along with a copy of the check and  
11 correspondence.

#### 12 **VIII. GENERAL INJUNCTIVE RELIEF**

13 A. **Non-Discrimination.** Defendants, their officers, owners, managers, subsidiaries,  
14 and successors shall: (a) not discriminate against persons in violation of the ADA, including on  
15 the basis of their disabilities, perceived disabilities and/or records of disabilities; (b) not engage  
16 in any action, policy or practice that discriminates against any employee in violation of the  
17 ADA, including on the basis of their disabilities, perceived disabilities and/or records of  
18 disabilities; (c) engage in the interactive process with each qualified individual with a disability  
19 in conformity with the ADA; and (d) provide a reasonable accommodation to each qualified  
20 individual with a disability, unless Defendants demonstrate that the accommodation would  
21 impose an undue hardship on the operation of their business.

22 B. **Retaliation.** Defendants, their officers, owners, managers, subsidiaries, and  
23 successors shall not retaliate against any current or former employee or applicant of Defendants  
24 or its successors because she or he has, in the past, or during the term of the Decree:  
25 (a) participated in any manner in any investigation (including, without limitation, any internal  
26 investigation undertaken by Defendants or its successors) or proceeding in connection with the  
27 Action or the charge of discrimination from which it arose; (b) was identified as a possible  
28 witness or claimant in the Action or under the Decree; (c) sought and/or received any relief or

1 otherwise exercised rights under the Decree; or (d) applied for employment following receipt of  
2 a notice based on the provisions of the Decree.

3 C. “100% of Job Duties” and “100% Healed” Policies and Practices. Defendants,  
4 their officers, owners, managers, subsidiaries, and successors, shall not implement any policy,  
5 procedure, or practice whereby they require any employee or group of employees to fulfill  
6 “100% of job duties” and/or return to work without medical restrictions (“100% fit for  
7 duty”/“100% healed”), except that nothing in this provision forecloses Defendants’ ability to  
8 make only reasonable accommodations and to consider the individual’s ability to perform the  
9 essential job functions with such reasonable accommodation.

10 D. Leave, Light Duty, and Reassignment as Reasonable Accommodations.  
11 Defendants, their officers, owners, managers, subsidiaries, and successors, shall engage in the  
12 interactive process to identify and provide reasonable accommodations, as required by the ADA,  
13 including where appropriate consideration of leave an accommodation, light duty, and/or  
14 temporary or permanent job reassignment.

15 E. Selection/Retention Policies. Defendants, their officers, owners, managers,  
16 subsidiaries, and successors, shall not implement any policy, procedure, or practice whereby an  
17 employee’s or applicant’s disability or record of a disability is a factor in the employee’s or  
18 applicant’s selection for a layoff/reduction-in-force or non-retention in connection with an  
19 acquisition or merger, except that nothing in this provision forecloses Defendants’ ability to  
20 make only reasonable accommodations and to consider the individual’s ability to perform the  
21 essential job functions with such reasonable accommodation.

## 22 IX. SPECIFIC INJUNCTIVE RELIEF

### 23 A. Reinstatement/Reapplication

24 1. In conjunction with the mailing of monetary relief, Claimants will be  
25 notified that they are invited to apply for employment with Defendants, including but  
26 not limited to the position(s) they previously held. The notice, which shall be drafted  
27 by Defendants and approved by the EEOC, shall inform Claimants where Defendants  
28 publicize the availability of vacant positions, specifically indicate that anyone who

1 may have felt they were terminated or excluded from employment due to a mental or  
2 physical impairment is encouraged to apply, state that any past policy or practice that  
3 required an employee with a disability to fulfill non-essential job functions (100% of  
4 job duties) and/or have no medical restrictions (100% fit for duty/100% healed) before  
5 being permitted to return to work has been eliminated; and briefly explain how  
6 applicants and employees may seek reasonable accommodation when applying and/or  
7 commencing employment. Defendants shall provide the EEOC the draft notice within  
8 fourteen (14) days of receiving the distribution list, and the EEOC shall respond within  
9 fourteen (14) days of receipt. If the EEOC does not respond within fourteen (14) days,  
10 Defendants may use the notice as drafted.

11 2. Within ninety (90) days of receiving each distribution list, Defendants  
12 shall review their personnel files and HRIS systems and eradicate any “no rehire”  
13 notation or other indication that would prevent an application for employment from  
14 the Claimants from being considered equally with other applicants. If Defendants  
15 believe there is cause to maintain a “no rehire” notation for a particular Claimant, they  
16 shall identify that Claimant to the EEOC and provide documentation demonstrating  
17 the reason for no rehire. If the EEOC finds that the documentation does not  
18 demonstrate a legitimate basis for no rehire, it will provide the information to the EEO  
19 Monitor, who shall decide whether there is cause to maintain the “no rehire” notation.  
20 Upon request by one or both of the Parties, the determination of the EEO Monitor  
21 shall be subject to review by the District Court.

22 3. Defendants will consider an application for employment received from a  
23 Claimant on an equal basis with applications received from other applicants, and a  
24 Claimant’s participation in this Action, status as a Claimant, and present or former  
25 disability, record of disability, or need for accommodation will not be factors in  
26 Defendants’ selection or non-selection of the Claimant for the position to which she or  
27 he applies, except to the extent permitted by the ADA (i.e. with regard to reasonable  
28 accommodation, qualification and undue burden), or other applicable law.

1           4. As described in Section IX.K.2.h below, Defendants shall report to the  
2 EEOC the applications they receive from Claimants and their selection(s) and non-  
3 selection(s).

4       B. Equal Employment Opportunity Monitor

5           1. Defendants shall retain an Equal Employment Opportunity Monitor  
6 (“Monitor”) with demonstrable experience in the ADA, including creating effective  
7 policies, procedures, practices and training regarding disabilities, reasonable  
8 accommodations, the interactive process, and retaliation under the ADA, to monitor  
9 Defendants’ compliance with the ADA and the provisions of the Decree. The Monitor  
10 shall be subject to the EEOC’s approval, which shall not be unreasonably withheld.  
11 Within fourteen (14) days of the Effective Date, Defendants shall propose a Monitor to  
12 the EEOC. If the EEOC’s does not approve the proposed Monitor, the EEOC shall  
13 provide Defendants with a list of at least three suggested candidates acceptable to the  
14 EEOC. Defendants shall bear all costs associated with the selection and retention of  
15 the Monitor and the performance of his or her duties. If the Monitor initially retained  
16 by Defendants thereafter declines to serve or to carry out her or his duties under the  
17 Decree, Defendants shall, within fourteen (14) days, notify the EEOC in writing of the  
18 need for a replacement Monitor, and the EEOC shall provide Defendants with three  
19 (3) new Monitors from which Defendants shall select a replacement. Defendants shall  
20 retain the original or replacement Monitor within thirty (30) days of the EEOC  
21 providing its approval or list of suggested candidates in writing.

22           2. Defendants shall advise the Monitor (and any replacement for her or  
23 him) that she or he has access to the EEOC and that she or he shall work with the  
24 EEOC as necessary to ensure Defendants’ compliance with this Decree.

25           3. The Monitor’s responsibilities shall include:

26           a. Reviewing and revising Defendants’ policies with respect to both  
27 applicants for employment and employees regarding the prevention of disability  
28 discrimination, provision of reasonable accommodations, and engagement in the

1 interactive process, ensuring Defendants implement these policies, and reviewing  
2 their implementation;

3 b. Reviewing and revising Defendants' procedures regarding requests  
4 for accommodation and the interactive process, ensuring Defendants implement  
5 these procedures, and reviewing their implementation;

6 c. Reviewing requests for accommodation and Defendants'  
7 interactive process with regard thereto;

8 d. Reviewing and revising Defendants' procedures for responding to  
9 complaints of disability discrimination, failure to engage in the interactive  
10 process; and/or failure to provide reasonable accommodation, ensuring  
11 Defendants implement these procedures, and reviewing their implementation;

12 e. Reviewing complaints of disability discrimination, failure to  
13 engage in the interactive process, failure to provide reasonable accommodation,  
14 and/or retaliation with regard thereto and Defendants' investigation thereof;

15 f. Reviewing, and making recommendations regarding training for  
16 Defendants' human resources, managerial, and supervisory staff on their  
17 responsibilities with respect to the ADA, including reasonable accommodations  
18 and the interactive process, and anti-retaliation policy;

19 g. Reviewing, making recommendations regarding, and approving  
20 training materials for all persons who work for Defendants on their rights and  
21 responsibilities with regard to disability discrimination, reasonable  
22 accommodations, and the interactive process, in compliance with the ADA;

23 h. Developing procedures to ensure the preservation of personnel and  
24 employment records regarding all requests for a reasonable accommodation, the  
25 interactive process, and complaints of disability discrimination; ensuring  
26 Defendants implement these procedures; and reviewing their implementation;

27 i. Developing Defendants' reporting and auditing procedures to  
28 assist Defendants in carrying out their compliance obligations under the Decree;

1                   j.       Assisting and assessing Defendants with respect to the proper  
2 identification of individuals covered by the ADA, engaging in the interactive  
3 process, and providing reasonable accommodations under the ADA;

4                   k.       Evaluating Defendants' progress in compliance under the Decree;

5                   l.       Monitoring Defendants' compliance with the terms of the Decree;  
6 and

7                   m.       Preparing an annual report on Defendants' compliance with the  
8 foregoing areas/obligations, including their compliance with the terms of the  
9 Decree and the Monitor's compliance with her or his responsibilities as  
10 articulated herein, which shall be provided simultaneously to the EEOC and  
11 Defendants.

12               4.       The Monitor shall assess Defendants' compliance with the foregoing  
13 provisions for the Term of the Decree by conducting in-person audits of Defendants'  
14 practices to ensure compliance on an annual basis. Defendants shall make available to  
15 the Monitor such documents, personnel, and access to facilities necessary to conduct the  
16 compliance audits, so long as the requests for such things are reasonable and do not  
17 interfere with Defendants' rendering of care or orderly operations. The Monitor will  
18 endeavor to work cooperatively with Defendants in these audits and avoid undue  
19 financial burden.

20               5.       Starting with the Monitor's third annual report, the Monitor may include a  
21 statement in her or his report that she or he believes that her or his involvement is no  
22 longer necessary to ensure Defendants' compliance with this Decree and the ADA,  
23 which must be supported by a detailed explanation of the bases for this statement. Upon  
24 the EEOC's agreement, which it shall not unreasonably withhold, the Monitor's duties  
25 shall thereafter be concluded in an orderly fashion prior to expiration of the Term of the  
26 Decree.

27  
28



1. C. ADA Coordinator(s) and ADA Points of Contact

2. I. Within thirty (30) days after the Effective Date, Defendants shall  
3. designate or hire an ADA Coordinator(s) who shall work out of Defendants' central  
4. office. In addition, Defendants may designate ADA Points of Contact for each of their  
5. facilities and locations who may be delegated responsibilities of the ADA  
6. Coordinator(s), as set forth below and subject to the approval of the Monitor, and whose  
7. fulfillment of those responsibilities shall be overseen by the ADA Coordinator(s). The  
8. ADA Points of Contact may include, but not be limited to employees who are benefits  
9. ambassadors or payroll supervisors. The ADA Coordinator(s)'s responsibilities shall  
10. include the following:

11. a. Receiving and timely processing requests for accommodation from  
12. employees and applicants (this responsibility that may be delegated to the ADA  
13. Point of Contact at the facility(ies) and location(s) for which she or he is  
14. responsible);

15. b. Participating in or reviewing any interactive process to ensure  
16. compliance with the ADA and terms of the Decree (this responsibility that may be  
17. delegated to the ADA Point of Contact at the facility(ies) and location(s) for  
18. which she or he is responsible);

19. c. Participating in any decision regarding the provision or denial of  
20. any accommodation to ensure compliance with the ADA and the terms of the  
21. Decree (this responsibility that may be delegated to the ADA Point of Contact at  
22. the facility(ies) and location(s) for which she or he is responsible);

23. d. Communicating with employees regarding the status and  
24. resolution of requests for accommodation and complaints of discrimination (this  
25. responsibility that may be delegated to the ADA Point of Contact at the  
26. facility(ies) and location(s) for which she or he is responsible);

27. e. Reviewing every accommodation under consideration for  
28. rescission at the facility(ies) and location(s) for which she or he is responsible;

1 communicating with each employee whose accommodation is under consideration  
2 for rescission before it is rescinded and providing her or him the opportunity to  
3 participate in the process, including but not limited to requesting an alternative  
4 reasonable accommodation, to the extent required by the ADA, and ensuring that  
5 any such rescission complies with the ADA (this responsibility may be delegated  
6 to the ADA Point of Contact at the facility(ies) and location(s) for which she or he  
7 is responsible);

8 f. Reviewing any decision that was delegated to an ADA Point of  
9 Contact regarding the provision, denial, or rescission of any accommodation to  
10 ensure compliance with the ADA and the terms of the Decree;

11 g. Ensuring ADA compliance in selection and termination decisions  
12 at the facility(ies) and location(s) for which she or he is responsible; and

13 h. Receiving, processing, and investigating complaints of disability  
14 discrimination, failure to accommodate, and retaliation with regard thereto.

15 2. All employees at each of Defendants' facilities and locations will be  
16 informed in writing when the ADA Coordinator(s) is designated, hired, and/or changed,  
17 and, if applicable, the ADA Point of Contact for their facility/location, including all  
18 contact information for the ADA Coordinator(s) and ADA Point of Contact and a brief  
19 explanation of the ADA Coordinator(s)'s and ADA Point of Contact's responsibilities.

20 3. The ADA Coordinator(s) may communicate directly with the Monitor in  
21 compliance with this Decree.

22 D. Policies and Procedures

23 1. Revision of Policy. Within ninety (90) days of the Effective Date, the  
24 Monitor shall work with Defendants to review and revise their policies and procedures  
25 concerning disability discrimination and reasonable accommodation (the "Policy"). The  
26 revised Policy shall include:

27 a. A clear explanation of what constitutes a disability under the ADA,  
28 as well as the ADA's reasonable accommodation and interactive process

1 requirements, and a statement that retaliation for requesting an accommodation or  
2 making a complaint of discrimination on the basis of disability is prohibited;

3 b. Clear and objective criteria that expressly prohibits discrimination  
4 on the basis of disability and/or perceived disability;

5 c. A specifically described procedure by which employees may seek  
6 reasonable accommodations through the interactive process, including: to whom  
7 an employee may make requests for accommodation, the procedures for  
8 communicating such requests, the identity of whom an employee or applicant may  
9 contact if they have questions about the process, and examples of reasonable  
10 accommodations including but not limited to leave as an accommodation to the  
11 extent required by the ADA;

12 d. Assurance that Defendants will protect the privacy of all  
13 reasonable accommodation requests and discrimination complaints to the extent  
14 practicable as required by the ADA;

15 e. A clearly described complaint process that provides multiple  
16 avenues of complaint to whom employees may report disability discrimination,  
17 failure to engage in the interactive process, failure to provide reasonable  
18 accommodation, and/or retaliation with regard thereto;

19 f. Assurance that Defendants will conduct a prompt, thorough, and  
20 impartial investigation and take prompt and appropriate corrective action when it  
21 determines that discrimination, failure to accommodate, and/or retaliation has  
22 occurred; and

23 g. A statement that retaliation for requesting an accommodation or  
24 making a complaint of discrimination on the basis of disability is prohibited; and

25 h. Assurance that Defendants will hold all employees, including  
26 managers, accountable for engaging in conduct prohibited under the Policy and  
27 ADA and, at Defendants' option, other anti-discrimination laws.  
28

1                   2.    Distribution of Policy

2                   a.    Within five (5) business days of the EEO Monitor's approval of  
3                   the revised Policy, and no later than one hundred (100) days of the Effective Date,  
4                   Defendants shall provide to the EEOC a copy of the Policy and an accompanying  
5                   notice which explicitly states that Defendants have eliminated (i) any past policy  
6                   or practice that required an employee with a disability to fulfill non-essential job  
7                   functions (100% of job duties) and/or have no medical restrictions (100% fit for  
8                   duty/100% healed) before being permitted to return to work; and (ii) any past  
9                   policy or practice that limited the availability of leave as a reasonable  
10                  accommodation to a pre-determined maximum amount (the "elimination notice").

11                  b.    Within one hundred and twenty (120) days of the Effective Date,  
12                  Defendants shall distribute its Policy and the elimination notice to each  
13                  managerial and non-managerial employee.

14                  c.    Within the Term of the Decree, Defendants will provide a copy of  
15                  the Policy to any employee hired after the distribution date of the Policy within  
16                  thirty (30) days of the employee's start date.

17                   3.    Posting of Policy

18                  a.    Within one hundred and twenty (120) days of the Effective Date  
19                  and throughout the duration of the Decree, Defendants shall physically and  
20                  accessibly post the Policy in a conspicuous place at all of Defendants' facilities in  
21                  an area accessible to all employees. Defendants shall notify all employees that  
22                  they may request a copy of the Policy in alternative accessible formats, including  
23                  but not limited to, electronically, in large type, and/or translated.

24                  E.    Accommodation of Lifting Restrictions

25                  1.    Defendants shall make efforts to expand their capacity to accommodate  
26                  lifting restrictions. This expansion may include:

27                  a.    The acquisition of additional lifting equipment, such Hoyer Lifts,  
28                  gait belts, and other transfer assists and lifts; and

1                   b.     Issuing guidelines stating that employees are permitted to request  
2 assistance when lifting patients/residents.

3                   2.     The Monitor shall assess Defendants' efforts to expand their capacity to  
4 accommodate lifting restrictions, and Defendants shall not unreasonably reject  
5 recommendations made by the Monitor based on that review.

6                   3.     The Monitor shall report to the EEOC the efforts made by Defendants to  
7 improve their capacity to accommodate lifting restrictions.

8           F.     Performance Evaluations

9           Within ninety (90) days of the Effective Date, Defendants shall create a provision in the  
10 annual performance evaluation of its ADA Coordinator and human resources personnel  
11 responsible for implementing and overseeing Defendants' ADA compliance to hold individuals  
12 accountable for failing to engage in the interactive process, failing to provide or administer  
13 reasonable accommodations to employees, or failing to comply with Defendants' policies and  
14 procedures regarding reasonable accommodation and disability discrimination.

15           G.     Accommodation Log

16           1.     Defendants shall create and maintain a log that documents any  
17 accommodation requests pertaining to any applicant or employee (the "Accommodation  
18 Log"). In the event an employee makes any subsequent request to modify an  
19 accommodation or implement a different accommodation, Defendants shall include in  
20 the Accommodation Log the information required by this Section. The Accommodation  
21 Log shall include the following information:

- 22                   a.     Name of person making the request;
- 23                   b.     Date of the request;
- 24                   c.     Physical or mental impairment;
- 25                   d.     The person(s) to whom the request for accommodation was made;
- 26                   e.     The accommodation(s) requested;
- 27                   f.     The person(s) involved in the interactive process;
- 28                   g.     The records or documents made or reviewed in the course of

1 engaging in the interactive process;

2 h. The person(s) involved in the decision-making process regarding  
3 the request for accommodation;

4 i. The accommodation(s) provided;

5 j. The reason for the decision to provide or refuse any  
6 accommodation;

7 k. Any complaints made by individuals regarding accommodation  
8 issues, disability discrimination issues, and/or retaliation issues; and

9 l. Whether any modification or additional accommodations related to  
10 a prior accommodation were sought and if such requests were granted or denied.

11 H. Training

12 1. All Employees.

13 a. Defendants shall provide training materials approved by the  
14 Monitor to all Defendants' employees. The training materials must invite  
15 employees to ask questions and provide a clearly explained method for doing so.  
16 The training materials shall be provided in multiple languages, to be determined  
17 in consultation with the Monitor based on Defendants' employees' reading  
18 fluency, and shall cover the revised Policy and the ADA, including:

19 i. The role and purpose of the ADA, including what  
20 constitutes unlawful discrimination and the denial of a reasonable  
21 accommodation;

22 ii. The rights and responsibilities under the ADA, including,  
23 but not limited to engaging the interactive process and how to provide,  
24 request, and obtain a reasonable accommodation and specifically the right  
25 to work with restrictions and/or return to work before "fully healed";

26 iii. Defendants' policies and procedures for reasonable  
27 accommodation requests, including engaging in the interactive process;  
28

1                   iv.    The type of conduct that is considered discriminatory under  
2 the ADA; and

3                   v.    Defendants' policies and procedures for reporting and  
4 handling complaints of disability discrimination, failure to engage in the  
5 interactive process, failure to provide reasonable accommodation, and/or  
6 retaliation with regard thereto. Examples shall be given of the prohibited  
7 conduct to ensure understanding by the employees.

8                   b.    All persons required to receive such training materials shall verify  
9 in writing that they received them.

10                  c.    Within thirty (30) days of the start date of any employee hired  
11 within the Term of the Decree, Defendants shall provide them the training  
12 materials set forth above.

13                  2.    Managerial and Supervisory Employees

14                  a.    Within one (1) year of the Effective Date, Defendants, in  
15 consultation with the Monitor, shall ensure that all Defendants' managerial and  
16 supervisory employees and ADA Points of Contact receive an interactive  
17 Managerial Training. The Managerial Training may be incorporated into a longer  
18 training addressing related issues, but must specifically address the ADA and the  
19 revised Policy, including the topics set forth in Section IX.H.1 above and:

20                        i.    Identifying who is protected under the ADA;  
21                        ii.   Recognizing an accommodation request or potential need  
22 for an accommodation for individuals with disabilities;

23                        iii.   Engaging in the interactive process to handle reasonable  
24 accommodation requests;

25                        iv.   Recognizing and prevent disability discrimination;

26                        v.    The proper handling and investigation of complaints of  
27 disability discrimination (even though these supervisors may not be  
28 themselves conducting investigations); and

1                   vi.     Elimination of misunderstandings concerning the ADA,  
2                   including avoiding “100% of job duties” and “100% fit for duty”/“100%  
3                   healed” practices, inflexible return to work requirements, and inflexible  
4                   leave policies;

5                   b.     The Managerial Training set forth above shall be mandatory for all  
6                   employees employed as managerial or supervisory and/or ADA Points of Contact  
7                   by Defendants during the first year of the Decree. All persons required to receive  
8                   such training shall verify in writing that they received it.

9                   c.     Within sixty (60) days of the hire, promotion or designation of any  
10                  managerial or supervisory employee or ADA Point of Contact after the first year  
11                  of the Decree but within the Term of the Decree, Defendants shall provide a  
12                  Management Training covering the same issues set forth above. All persons  
13                  required to receive such training shall verify in writing that they received it.

14                 d.     A second Managerial Training that complies with Section IX.H.2.a  
15                  above shall be provided to all Defendants’ employees employed as managerial  
16                  and supervisory employees and ADA Points of Contact during the third year of  
17                  the Decree. All persons required to receive such training shall verify in writing  
18                  that they received it.

19                 e.     During the second and fourth years of the Decree, Defendants shall  
20                  ensure that all Defendants’ managerial and supervisory employees and ADA  
21                  Points of Contacts receive refresher materials, approved by the Monitor,  
22                  addressing the topics set forth in Section IX.H.2.a above. These materials shall be  
23                  distributed during an in-person managerial or supervisory meeting, and the  
24                  recipients must be informed at that time to whom they may direct any questions.  
25                  At the end of each year, Defendants shall certify to the EEOC that it has complied  
26                  with this provision.



1           3.    Human Resources Employees and ADA Coordinator

2           a.       Within one hundred and twenty (120) days of the Effective Date,  
3 Defendants, in consultation with the Monitor, shall provide live, interactive, and  
4 advanced Human Resources Training (“HR Training”) to their human resources  
5 employees and ADA Coordinator(s). Excluded from this requirement are  
6 employees in the human resources department whose duties are primarily clerical.  
7 This HR Training may be incorporated into a more general equal employment  
8 opportunity human resources training, but at least two (2) hours are specifically  
9 devoted to the ADA and the revised Policy, including:

10                   i.       The interactive process, include the necessity of  
11 communicating with every party involved with a particular  
12 accommodation in order to assess the needs of the employee requesting a  
13 reasonable accommodation, including medical leaves of absence;

14                   ii.       How to recognize an accommodation request or a potential  
15 need for an accommodation for individuals with disabilities, and how to  
16 determine effective accommodation, including intermittent leave of  
17 absences as a reasonable accommodation;

18                   iii.       Monitoring accommodations to ensure employees are  
19 effectively accommodated and to ensure accountability of all parties  
20 involved in the accommodation process;

21                   iv.       Obligations under the Decree, including the duties  
22 regarding the Accommodation Log;

23                   v.       The interplay of the ADA, including the ADA  
24 Amendments Act of 2008, with the Family and Medical Leave Act;

25                   vi.       How to recognize an accommodation request or a potential  
26 need for an accommodation for individuals with disabilities;

27                   vii.       Investigating and properly handling complaints of disability  
28 discrimination and failure to accommodate; and

1                   viii.   Reviews of prior decision-making and responses to  
2                   requests for reasonable accommodation received in the past year.

3                   b.       The HR Training set forth above shall be mandatory and occur  
4                   annually for the duration of the Decree. All persons required to attend such  
5                   training shall verify their attendance in writing. Any Human Resources employee  
6                   or ADA Coordinator unable to attend any scheduled HR Training shall be trained  
7                   within sixty (60) days of the live training set forth in Section IX.H.3.a above.

8                   c.       Within sixty (60) days of the start date, promotion, or assignment  
9                   of any Human Resources employee or ADA Coordinator after the annual training  
10                  but within the Term of the Decree, Defendants shall provide a live HR Training  
11                  covering the same issues set forth in Section IX.H.3.a above. All persons  
12                  required to attend such training shall verify their attendance in writing.

13                  d.       In addition to the formal training, Defendants shall allow the  
14                  Monitor to work with their human resource employees and ADA Coordinators on  
15                  an informal basis to provide feedback on accommodation requests and the  
16                  interactive process, and they shall provide the name and contact information for  
17                  the Monitor to their human resource employees and ADA Coordinators so they  
18                  can seek guidance from the Monitor as needed. The Monitor shall include in her  
19                  or his reports a section addressing the improvements she or he has observed  
20                  through these efforts.

21                  4.    Verification of Training

22                  a.       The Monitor shall have the right to attend the formal trainings  
23                  described in the Decree. Upon the setting of its training schedule each quarter,  
24                  Defendants shall provide the Monitor the schedule that will include the time and  
25                  location of the training session. The Monitor shall inform the EEOC each time  
26                  she or he attends a training. In order to minimize financial burden, the Monitor  
27                  shall not attend more than one training every six months.

1 I. Posting of Notice of Consent Decree and Settlement.

2 Within fourteen (14) days after the Effective Date and throughout the Term of the  
3 Decree, Defendants shall post the notice attached to the Decree as Exhibit A, in a clearly visible  
4 location frequented by employees at Defendants' facilities nationwide during the Term of the  
5 Decree.

6 J. Record Keeping

7 1. Defendants shall work with the Monitor to establish a record-keeping  
8 procedure that provides for the centralized tracking of reasonable accommodation  
9 requests and disability discrimination complaints. The records to be maintained shall  
10 include:

11 a. All personnel and employment records reflecting requests for  
12 accommodation, which shall be preserved for the Term of the Decree and  
13 thereafter for a period of one year from the date of the making of the record or the  
14 personnel action involved, whichever occurs later;

15 b. All personnel and employment records reflecting complaints of  
16 disability discrimination, failure to engage in the interactive process, failure to  
17 provide reasonable accommodation, and/or retaliation with regard thereto,  
18 including documents relating to all investigations or resolutions of such  
19 complaints;

20 c. All personnel and employment records received from or reflecting  
21 the selection or non-selection of a Claimant who applied for employment with  
22 Defendants or their subsidiaries during the Term of the Decree, including without  
23 limitation: job applications and related materials received from Claimant and all  
24 other candidates for the position(s) to which Claimant applied, interview notes,  
25 job offers, non-selection notices, and documentation of the selection process;

26 d. Forms acknowledging employees' receipt of the Policy; and

27 e. Documents verifying the occurrence of all training sessions and  
28 names and positions of all recipients of each training required under the Decree;

1 and

2 f. All annual performance evaluations of ADA Coordinator(s), ADA  
3 Points of Contact, and human resources personnel responsible for handling ADA  
4 accommodations and complaints of discrimination, failure to accommodate or  
5 failure to engage in the interactive process, reflecting accountability for engaging  
6 in the interactive process, providing and administering reasonable  
7 accommodations to employees, or complying with Defendants' policies and  
8 procedures regarding reasonable accommodation and disability.

9 2. Defendants will make the aforementioned records available to the EEOC  
10 within thirty (30) days following a written request by the EEOC. If Defendants identify  
11 an inadvertent failure to maintain a record requested by the EEOC, Defendants shall  
12 notify the EEOC and, to the best of their ability, provide the EEOC in writing with the  
13 substantive information the lost record would have showed, which shall be considered  
14 substantial compliance with this section unless the EEOC demonstrates prejudice to the  
15 implementation of the substantive provisions of the Decree.

16 K. Reporting

17 1. Initial Reporting. Defendants, in coordination with the Monitor, shall  
18 provide the following reports to the EEOC in addition to the annual reports described  
19 below:

20 a. Within one hundred fifty (150) days of the Effective Date,  
21 Defendants shall submit to the EEOC a statement confirming distribution of the  
22 Policy and the elimination notice to each managerial and non-managerial  
23 employee.

24 b. Within one hundred fifty (150) days of the Effective Date,  
25 Defendants shall submit to the EEOC a statement confirming the posting of the  
26 Policy and its availability in alternative accessible formats.

27 c. Within thirty (30) days of each of the trainings (and provision of  
28 training materials) set forth in Sections IX.H.1.a, IX.H.2.a, and IX.H.3.a above,

1 Defendants shall produce to the EEOC documents verifying the occurrence of all  
2 training sessions conducted as required under the Decree, including the written  
3 training materials used, a description of the training provided, a list of the  
4 individuals who conducted the training, and a list of the names and job titles of  
5 the recipients of each training.

6 2. Annual Reporting. Defendants, in coordination with the Monitor (who  
7 shall assist the Defendants in the preparation of any reports required by this Decree),  
8 shall provide the following reports to the EEOC annually throughout the Term of the  
9 Decree:

10 a. A statement confirming that the Policy has been distributed to all  
11 employees hired after the initial distribution but during the previous twelve (12)  
12 months and has remained posted and available in alternative accessible formats;

13 b. Documents verifying the occurrence of all training sessions  
14 conducted as required under the Decree during the previous twelve (12) months,  
15 including the written training materials used, a description of the training  
16 provided, a list of the individuals who conducted the training, and a list of the  
17 names and job titles of the recipients of each;

18 c. Acknowledgement of receipt of the Policy for all employees  
19 during the previous twelve (12) months;

20 d. A copy of all Accommodations Logs created pursuant to Section  
21 IX.G above for accommodations requested, granted, denied, and/or modified  
22 during the previous twelve (12) months;

23 e. Confirmation of compliance with the Notice Posting requirement  
24 as set forth in Section IX.I above during the previous twelve (12) months;

25 f. A report summarizing all complaints of disability discrimination,  
26 failure to engage in the interactive process, failure to provide reasonable  
27 accommodation, and/or retaliation with regard thereto made, investigated and/or  
28 resolved during the previous twelve (12) months, which includes for each

1 complaint: (i) the name and title of the complaining party(ies); (ii) the date of the  
2 complaint; (iii) the nature of the complaint (i.e. disparate treatment, failure to  
3 accommodate, hostility, etc.); (iv) the name and title of alleged perpetrator; (v) a  
4 written description of what was alleged; (vi) a brief written summary of  
5 Defendants' investigation, and (vii) a written description of the resolution of the  
6 complaint, including a description of what actions, if any, Defendant(s) took;

7 g. A report summarizing the performance evaluations of ADA  
8 Coordinator(s) and human resources personnel with respect to their accountability  
9 for complying with Defendants' policies and procedures regarding reasonable  
10 accommodation and disability;

11 h. A report summarizing applications for employment received from  
12 Claimants during the previous twelve (12) months, including: the identity of the  
13 Claimant, the position(s) for which she or he applied, the facility(ies) to which she  
14 or he applied, the position(s) offered to the Claimant, if any, and the reason for the  
15 Claimant's non-selection, if applicable;

16 i. A report showing any revisions of Defendants' policies and  
17 procedures regarding reasonable accommodation, disability discrimination, or  
18 leave that have occurred since the preceding report, including a copy of the  
19 revised policies or procedures;

20 j. A report summarizing the progress made by Defendants during the  
21 previous twelve (12) months concerning the increase in Defendants' capacity to  
22 accommodate lifting restrictions in each position at each of its facilities and, if  
23 any revisions to Defendants' policies and procedures concerning the  
24 accommodation of lifting restrictions have occurred since the previous report,  
25 including copies of the revised policies and procedures; and

26 k. The status of Defendants' compliance with the terms of the  
27 Decree.  
28

1 **X. MISCELLANEOUS PROVISIONS**

2 A. During the Term of the Decree, Defendants shall provide any person or entity  
3 who is, or will be, upon consummation of a transaction and the continued operation of the  
4 facility or facilities, subject to this Decree as a successor as set forth in Section I.A and limited in  
5 Section I.F of this Decree, with a copy of the Decree within a reasonable time of not less than  
6 thirty (30) days prior to the closing of any agreement for acquisition or assumption of control of  
7 Defendants' facilities. Defendant shall have no obligation to provide a copy of the Decree to any  
8 person or entity that is excluded from the definition of "successor" as set forth in Section I.F of  
9 this Decree. Defendant shall also provide reasonable notice to the EEOC of a material change in  
10 corporate structure.

11 B. During the Term of the Decree, Defendants shall assure that each of their officers,  
12 managers and supervisors is aware of any provision(s) of the Decree which may be related to  
13 his/her job duties.

14 C. Unless otherwise stated, all notices, reports and correspondence required under  
15 the Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S. Equal  
16 Employment Opportunity Commission, 255 East Temple Street, 4<sup>th</sup> Floor, Los Angeles,  
17 California, 90012; facsimile number (213) 894-1301; email [LADO@eeoc.gov](mailto:LADO@eeoc.gov) and  
18 [anna.park@eeoc.gov](mailto:anna.park@eeoc.gov). Defendants shall maintain copies of all such notices, reports and  
19 correspondence for at least the Term of the Decree.

20 D. The Decree may be signed in counterparts. A facsimile signature shall have the  
21 same force and effect of an original signature or copy thereof.

22 **XI. COSTS OF ADMINISTRATION AND IMPLEMENTATION OF THE DECREE**

23 A. Defendants shall bear all costs associated with their administration and  
24 implementation of their obligations under the Decree.

25 **XII. COSTS AND ATTORNEYS' FEES**

26 A. Each party shall bear its own costs of suit and attorneys' fees.  
27  
28

1 The Parties agree to entry of the Decree and judgment subject to final approval by the  
2 Court.

3 All parties, through the undersigned, respectfully apply for and consent to this entry of  
4 this Consent Decree Order.

5 Respectfully submitted,

6 U.S. EQUAL EMPLOYMENT  
7 OPPORTUNITY COMMISSION

8  
9 Date: 2/14/20

By: 

10 Anna Y. Park  
11 Regional Attorney  
12 Attorney for Plaintiff EEOC

13 DEFENDANTS<sup>3</sup>

14 Date: 2/14/20

By: 

15 Harold Delamarter, Ryan Delamarter  
16 CEO, President, and/or Chief Legal Officer  
17 Authorized Representative

18 LANE POWELL PC

19 Date: 2/14/20

By: 

20 Paul M. Ostroff  
21 Shareholder  
22 Attorney for Defendants

23  
24  
25  
26  
27  
28 <sup>3</sup> Mr. Delamarter, CEO of Prestige Care, Inc., is the CEO, President, and/or owner of all Defendants to the Action, with the exception of Cypress Point Ventures, LLC, and is authorized to act on behalf of and bind all such Defendants.



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~~PROPOSED~~ ORDER

**GOOD CAUSE APPEARING:**

The Court hereby finds that compliance with all provisions of the foregoing Decree is fair and adequate. The Court hereby retains jurisdiction for the Term of the foregoing Consent Decree, and the provisions thereof are hereby approved.

**IT IS SO ORDERED.**

DATED: 02/19/2020

  
\_\_\_\_\_  
THE HONORABLE ANTHONY W. ISHII  
UNITED STATES DISTRICT JUDGE



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Los Angeles District Office

255 E. Temple Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
Intake Information Group: (800) 669-4000  
Intake Information Group TTY: (800) 669-6820  
Los Angeles Status Line: (866) 408-8075  
Los Angeles Direct Dial: (213) 894-1000  
TTY (213) 894-1121  
FAX (213) 894-1118  
Website: [www.eeoc.gov](http://www.eeoc.gov)

**NOTICE TO EMPLOYEES  
OF PRESTIGE CARE, PRESTIGE SENIOR LIVING, AND THEIR AFFILIATES**

1. This NOTICE is being posted and provided as part of a mutually agreed upon Consent Decree between Prestige Care, Inc., Prestige Senior Living, LLC, Prestige Senior Management, LLC, and their affiliates ("PRESTIGE") and the Equal Employment Opportunity Commission (the "EEOC") in Case No. 1:17-cv-01299-AWI-SAB filed in the U.S. District Court for the Eastern District of California, which alleged that PRESTIGE maintained policies and practices that required that all employees be "100% fit for duty"/"100% healed" and perform "100% of job duties" and failed to provide reasonable accommodations in violation of the Americans with Disabilities Act. PRESTIGE and the EEOC voluntarily entered into the Decree to resolve these allegations. As part of the Decree, PRESTIGE is posting this NOTICE to reflect its commitment to ensure equal employment opportunity for individuals with disabilities working at PRESTIGE.

2. PRESTIGE policy and Federal Law prohibit discrimination in any phase of employment based upon disability and the need for a reasonable accommodation of disability with respect to hiring, assignment, pay, hours, leave, promotion, recruitment, admission, training, dismissal, or any other terms, conditions, or privileges of employment. PRESTIGE will comply with such Federal law in all aspects, and it will not retaliate against employees because they have exercised their rights under the law by filing any complaint of discrimination or cooperating with the EEOC or by otherwise opposing employment practices made unlawful under federal law, including requesting accommodation of disability.

3. PRESTIGE will engage in an individualized, interactive process with any employee or job applicant who notifies it of a disability or disabling condition, whether temporary or otherwise, or who requests a reasonable accommodation for such a condition, to identify a reasonable accommodation that will enable her/him to perform the essential functions of her/his position and/or to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. This includes employees with disabilities returning from leave, and PRESTIGE will not impose a bar from light duty, "100% of job duties" or "100% fit for duty"/"100% healed" policies against such employees.

4. PRESTIGE has appointed a Monitor, \_\_\_\_\_, and ADA Coordinator, \_\_\_\_\_, to ensure Prestige's compliance with the Decree, to oversee investigation and resolution of all reports of discrimination, and to ensure equal opportunity for all employees. If any employee or job applicant believes she or he has been discriminated against, and she or he is not comfortable complaining to her or his supervisor, she or he may report it directly to either \_\_\_\_\_ or \_\_\_\_\_.

5. The EEOC is the federal agency responsible for enforcing the federal laws described above and receiving complaints regarding their violation and maintains offices throughout the United States. Any questions concerning the Consent Decree or compliance with its terms may be directed to the EEOC. Should you have any questions concerning the Consent Decree or compliance with its terms, or would like to complain about discrimination or retaliation, you may contact:

U.S. Equal Employment Opportunity Commission  
Los Angeles District Office  
255 E. Temple Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90012  
Telephone: (213) 894-1000  
TTY: (213) 894-1121  
FAX: (213) 894-1118  
Website: <http://www.eeoc.gov>

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

\_\_\_\_\_  
HAROLD DELAMARTER, CEO, Prestige Care, Inc.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

**This NOTICE must remain posted for five (5) years from the date shown above  
or until the expiration of the Decree, whichever is shorter.  
It must not be altered, defaced, or covered by any other material.**