

MEMORANDUM OF UNDERSTANDING OF SETTLEMENT
Silva v. Akua Behavioral Health, Inc. (Case No. 30-2022-01272105-CU-OE-CXC)
Delgado v. Akua Behavioral Health, Inc. (Case No. 22STCV13591)

On April 16, 2024, Plaintiffs Richard Silva and Alicia Delgado (“Plaintiffs”) and Defendant Akua Behavioral Health, Inc. (collectively, “the Parties”), participated in a mediation with Lynn Frank, Esq. Subject to final approval by the Superior Court of the State of California and with the understanding that this Memorandum of Understanding will be further memorialized with more particularity in a formal, written Joint Stipulation of Settlement, the Parties and their respective counsel hereby agree to binding settlement of the lawsuits entitled *Richard Silva v. Akua Behavioral Health, Inc.* (Orange County Superior Court Case No. 30-2022-01272105-CU-OE-CXC, “*Silva Action*”) and *Alicia Delgado v. Akua Behavioral Health, Inc.* (Los Angeles County Superior Court Case No. 22STCV13591, “*Delgado Action*”)¹ based on the following terms (“Settlement”):

1. Definition of “Defendant”: For purposes of the Settlement, the term “Defendant” means Akua Behavioral Health, Inc. and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

2. Global Settlement Approval Proceedings: In order to facilitate a global settlement of the *Silva Action* and the *Delgado Action*, the Parties have agreed to enter into a stipulation, subject to an order by the court, allowing the filing of an amended complaint that combines the class and/or PAGA claims alleged in the Actions into one action and that will also include allegations of misclassification raised by Delgado. The amended complaint shall also add a cause of action for Violation of Labor Code section 226.8 (misclassification penalties). The Parties shall meet and confer as to whether to seek approval of the Settlement in the *Silva Action* or the *Delgado Action*.

3. Class Definition and Class Period: The Parties agree to stipulate to the certification of the following class for settlement purposes only:

All current and former employees of Defendant that were classified as non-exempt at any time and employed in the state of California at any time during the Class Period (“Class”).

The Class Period shall be defined as the period commencing on April 22, 2021, and ending on either the date of preliminary approval of the Settlement by the Court or sixty (60) days from the date of mediation, i.e. June 15, 2024, whichever date occurs earlier. Members of the Class are hereinafter collectively referred to as “Class Members.”

4. PAGA Members and PAGA Period: The “PAGA Period” shall be defined as the period commencing on April 22, 2021, and ending on either the date of preliminary approval of

¹ For purposes of this Memorandum of Understanding, the *Silva Action* and the *Delgado Action* are referred to collectively as the “Actions”.

the Settlement by the Court or sixty (60) days from the date of mediation, i.e. June 15, 2024. “PAGA Members” are defined as all current and former non-exempt employees of Defendant employed by Defendant in the state of California at any time during the PAGA Period.

5. Definition of Workweek: For purposes of the Settlement, “Workweek” refers to any calendar week (i.e., a week beginning with Sunday and ending with Saturday), in which a Class Member or PAGA Member worked at least 1 day.

6. Gross Settlement Amount: The total value of the Settlement is Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) (the “Gross Settlement Amount”). The Gross Settlement Amount is non-reversionary, and includes: (1) payments to the Class, (2) Class Counsel’s fees, (3) Class Counsel’s costs, (4) Settlement Administration Costs, (5) Enhancement Payment to Plaintiffs; (6) Payment of PAGA penalties to be paid to the LWDA and PAGA Members; and (7) all employee-side taxes arising from the payments made under this Settlement. The Gross Settlement Amount is exclusive of the employer share of any applicable payroll taxes, and any such employer-side payroll taxes shall be paid by Defendant separately and in addition to the Gross Settlement Amount.

The Gross Settlement Amount plus any applicable employer-side payroll taxes shall be the maximum amount Defendant is required to pay under the Settlement, subject to the Escalator Clause.

7. Escalator Clause: Defendant represents that the Class Members worked a total of 20,000 Workweeks between April 22, 2021 through April 16, 2024 (“Certified Workweek Count”). Should the qualifying Workweeks worked by the Class Members during the this period ultimately increase by more than 10% of the Certified Workweek Count (i.e., by more than 2,000 Workweeks), Defendant shall have the option of either: (1) increasing the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10% of the Certified Workweek Count (e.g., if the number of Workweeks increases by 11% to 22,000 Workweeks, the Gross Settlement Amount will increase by 1% to \$909,000.00); or (2) shortening the Class Period to end on the last date prior to which the actual number of Workweeks worked by the Class Members exceeds the Certified Workweek count by 10% (i.e., the day before the total number of Workweeks is equal to more than 22,000).

8. Class Counsel’s Fees and Costs: The Parties agree to the designation of S. Emi Minne and Jill Parker of Parker & Minne, LLP, Edwin Aiwasian, Arby Aiwasian, and Joanna Ghosh of Lawyers for Justice, P.C., and Donald Potter of Law Office of Donald Potter, as counsel for the Class for all purposes in this case. Defendant agrees not to oppose Class Counsel’s application for an award of attorney fees of up to thirty-five percent (35%) of the Gross Settlement Amount (\$315,000.00), and reimbursement of reasonable and actual costs incurred by Class Counsel in the Actions. Any attorney fees and costs not approved by the Court shall become part of the Net Settlement Amount. Any attorneys fees approved by the Court shall be allocated in accordance with the Joint Prosecution and Attorney Fee Split Agreement between Class Counsel.

9. Plaintiffs’ Enhancement Payments: Defendant agrees not to oppose Plaintiffs’ request for Enhancement Payments in the amounts of \$5,000.00 to Plaintiff Richard Silva and \$2,500.00 to Plaintiff Alicia Delgado. The Enhancement Payments are in addition to whatever

monetary settlement Plaintiffs are entitled to recover from the Net Settlement Amount as Class Members. Any amount of the Enhancement Payment not approved by the Court shall become part of the Net Settlement Amount.

10. Settlement Administration Expenses: The Settlement Administrator shall be ILYM Group, Inc., Phoenix Settlement Administrators, or Apex Class Action LLC. Settlement administration expenses shall be paid from the Gross Settlement Amount, subject to court approval. To the extent that Settlement Administration costs are ultimately less than the amount of the quote provided by the selected Settlement Administrator, the remainder shall become part of the Net Settlement Amount.

11. PAGA Penalties: The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00), or the minimum amount the Court is willing to approve if above \$50,000.00, of the Gross Settlement Amount as PAGA Penalties. 75% of the PAGA Penalties (i.e., \$37,500.00) shall be paid directly to the LWDA. The remaining 25% the PAGA Penalties (i.e., \$12,500.00) shall be paid to PAGA Members on a *pro rata* basis, based on the total number of Workweeks (full or partial) worked by each PAGA member during the PAGA Period ("Individual PAGA Payment"). PAGA Members shall receive an Individual PAGA Payment irrespective of whether they request to be excluded from the Class Action portion of the Settlement.

12. Net Settlement Amount: "Net Settlement Amount" means the funds available for payments to the Class, which shall be amount remaining after the following amounts are deducted from the Gross Settlement Amount: (1) Class Counsel's fees, (2) Class Counsel's costs, (3) Settlement Administration Costs, (4) Enhancement Payments to Plaintiffs; (5) PAGA Penalties to be paid to the LWDA and PAGA Members, and (6) all employee-side taxes arising from the payments made under this Settlement.

13. Payments to Participating Class Members: All Class Members who do not timely opt out of the Settlement ("Participating Class Members") shall receive payment from the Net Settlement Amount. The amount that each Participating Class Member will be eligible to receive under the Settlement will be calculated by dividing each participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount.

Participating Class Members' individual settlement payments will be designated as 20% wages, 40% interest, and 40% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from the employee's wages and all other authorized and required withholdings. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages. The Individual PAGA Payouts shall be designated 100% as penalties. The Settlement Administrator will be responsible for issuing to Participating Class Members a form W-2 for amounts deemed "wages" and to PAGA Members and Participating Class Members an IRS Form 1099 for the amounts deemed penalties and interest.

If any checks to Participating Class Members and PAGA Members remain uncashed 180 calendar days after distribution of the Net Settlement Amount, such remaining funds shall be forwarded to

the Controller of the State of California pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, to be held in trust for those Participating Class Members and PAGA Members who did not timely cash their Settlement checks. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as all payments to the Participating Class Members and PAGA Members will be paid out, whether or not these individuals cash their Settlement checks. Therefore, Defendant will not be required to pay any interest on such amounts.

14. Class List – No later than fourteen (14) calendar days after the date on which the Court enters an order granting preliminary approval of the Settlement, Defendant shall provide the Settlement Administrator with a Microsoft Excel spreadsheet containing the following information for each class Member: (1) full name; (2) last known home address; (3) last known telephone number; (4) social security number; (5) start and end dates of active employment as a non-exempt employee of Defendant in the State of California; (6) total Workweeks during the Class Period; (7) total Workweeks during the PAGA Period; and (8) any other information required by the Settlement Administrator in order to effectuate the terms of the Settlement ("Class List"). This is a material term of the Settlement, and if Defendant fails to comply, Plaintiffs shall have the right to void the Settlement.

15. Notice, Objection and Opt-Out Process: Class Members will be provided with a Notice of Class Action Settlement in both English and Spanish providing a summary of the provisions of the Settlement ("Class Notice"). The Class Notice shall list the amount of Workweeks worked by the Class Member during the Class Period and the estimated individual payment each Class Member will receive if they participate in the Settlement. The Class Notice will also include instructions on how to opt-out of and object to the Settlement. The Settlement Administrator shall mail the Class Notice to Class Members via First Class U.S. Mail no later than fourteen (14) calendar days after receiving the Class List from Defendant.

Class Members will be provided 60 days within which to submit requests for exclusion and objections. Class Members who wish to object will need to mail those objections to the Settlement Administrator only. Class Members will not be barred from appearing at the final approval hearing if they have not complied with the objection procedures for mailing objections to the Settlement Administrator.

Class Members who submit timely requests to opt out of the Settlement will not receive payment from the Settlement, and will not be bound by the terms of the proposed Settlement or the final judgment (with the exception of claims arising under the PAGA.) Eligible PAGA Members will receive their share of the employee portion of the PAGA Penalties and will be deemed to have released any claims arising out of PAGA, regardless of whether they opt-out from the release of their class claims.

16. Release by Participating Class Members: Upon the complete remittance of the Gross Settlement Amount by Defendant to the Settlement Administrator, Plaintiffs and Participating Class Members will fully and finally release and discharge Defendant from all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the operative complaint in this action

including the following claims: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (8) Violation of Labor Code section 226.8 (misclassification penalties); and (9) claims for unfair or unlawful business practices under California Business & Professions Code sections 17200, et seq. which are predicated on violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802 (collectively, the "Released Class Claims"). This release is limited to claims arising during the Class Period.

17. Release by PAGA Members: Upon the complete remittance of the Gross Settlement Amount by Defendant to the Settlement Administrator, Plaintiffs, PAGA Members, and the California Labor and Workforce Development Agency will fully and finally release and discharge Defendant from any and all claims for the recovery for civil penalties, attorneys' fees and costs permissible under PAGA which Plaintiffs and/or the Aggrieved Employees had, or may claim to have, against Released Parties, arising out of the violations alleged in the operative complaints in the Actions and/or the PAGA Notice filed by Plaintiffs with the LWDA, including failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed at discharge or resignation; failure to timely pay wages during employment; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business-related expenses; misclassification of status; and violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802 (the "Released PAGA Claims"). This release is limited to claims arising during the PAGA Period.

In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a PAGA Member who are eligible to receive an Individual PAGA Payment shall be deemed to have released PAGA claims, regardless of whether the check for the Individual PAGA Payment is cashed or not.

18. NAMED PLAINTIFFS' RELEASED CLAIMS: IN ADDITION TO THE PARTICIPATING CLASS MEMBERS' RELEASED CLAIMS DESCRIBED ABOVE, PLAINTIFFS SHALL RELEASE ALL CLAIMS RELATED TO THEIR EMPLOYMENT WITH DEFENDANT, INCLUDING ALL CLAIMS ALLEGED IN THE ACTIONS, AND BE BOUND BY A CIVIL CODE SECTION 1542 RELEASE AND WAIVER OF ALL CLAIMS KNOWN AND UNKNOWN, WITHOUT EXCEPTION, EXCEPT AS MAY BE PROHIBITED BY LAW. THIS SPECIFICALLY EXCLUDES CLAIMS FOR UNEMPLOYMENT INSURANCE, DISABILITY, SOCIAL SECURITY, AND WORKERS' COMPENSATION (EXCEPT FOR CLAIMS PURSUANT TO LABOR CODE SECTIONS 132A AND 4553). THIS RELEASE ALSO SPECIFICALLY EXCLUDES ANY AND ALL INDIVIDUAL CLAIMS BROUGHT BY PLAINTIFF ALICIA DELGADO AGAINST DEFENDANT IN THE CIVIL ACTION ENTITLED *ALICIA DELGADO V. AKUA BEHAVIORAL HEALTH, INC.* (LOS ANGELES

COUNTY SUPERIOR COURT CASE NO. 23STCV02166) WHICH ARE THE SUBJECT OF A SEPARATE SETTLEMENT AGREEMENT.

19. Neutral Employment Reference: Defendant agrees that it will adopt a neutral reporting policy regarding any future employment references related to Plaintiffs. In the event that any potential or future employers of Plaintiffs request a reference regarding Defendant's employment of Plaintiffs, Defendant shall only provide Plaintiffs' dates of employment and last job title during employment. Defendant shall not refer to the Actions or this Settlement.

20. Adequacy of Consideration: The Parties agree that the consideration described herein constitute adequate consideration for the Settlement and releases described herein.

21. Defendant's Option to Terminate Settlement: If more than 5% of the Class Members opt-out of the Settlement, Defendant may, in its discretion, withdraw from this Settlement, subject to paying any Settlement Administration expenses incurred to date. Defendant shall meet and confer with Plaintiff's counsel before withdrawing from the Settlement pursuant to this provision.

22. Confirmatory Informal Discovery: The Settlement is contingent upon Defendant's provision of confirmatory discovery required by Class Counsel to fully evaluate Defendant's financial condition. Specifically, Defendant shall provide Class Counsel with the following financial documents within ten (10) business days of execution of this Memorandum of Understanding: (i) Defendant's general ledger for 2023; (ii) cash flow statements for the past six (6) months; and (iii) bank statements for the past six (6) months.

23. Agreement to Cooperate: The Parties agree to cooperate to promote participation in the Settlement and in seeking court approval of the Settlement, including working cooperatively to address any questions raised by the Court and making any amendments required by the Court. Plaintiff's Counsel shall provide Defendant's Counsel with the initial draft of a formal Joint Stipulation of Settlement within thirty (30) days of the execution of this MOU. The Parties agree that they shall finalize the formal Joint Stipulation of Settlement no later than thirty (30) days after an initial draft is provided by Class Counsel to Defendant's Counsel. The Parties and their counsel agree not to take any action to encourage any Class Members to opt out of and/or object to the Settlement. Defendant agrees not to obtain waivers or Pick Up Stix agreements from the Class Members during the Settlement approval process and will work in good faith to reach an agreement approved by the Court. Defendant further agrees that it will not oppose Plaintiffs' motion for preliminary approval or motion for final approval, and will provide Plaintiffs with any declarations or other evidence required by the Court in order to obtain preliminary and final approval of the Settlement including, without limitation, any evidence required by the Court to support the installment plan set forth in paragraph 27.

24. Court Approval: If the Court fails to approve this Settlement for any reason, the Parties agree to attend mediation again with Lynn Frank Esq. in an effort to reach a settlement approved by the Court.

25. No Admission: Defendant expressly denies any liability. Neither this MOU nor the

"long form" Stipulation of Settlement shall constitute an admission of liability or of the accuracy of any allegation made by Plaintiffs or Class Counsel.

26. Effective Date: The effective date of the Settlement will be later of the following: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

27. Funding: Funding of the Gross Settlement Amount shall occur over a series of twenty-four (24) installment payments as follows:

- a. Defendant shall make eight (8) monthly installment payments of \$20,000.00 ("2024 Installments") into an interest-bearing Qualified Settlement Fund ("QSF") established by the Settlement Administrator. The first 2024 Installment shall be deposited by Defendant into the QSF by no later than May 31, 2024 (or, if the Settlement Administrator requires additional time to establish the QSF, within three (3) business days following establishment of the QSF). All remaining 2024 Installments shall be deposited by Defendant into the QSF by no later than the last day business day of each subsequent month, with the final 2024 Installment deposited by no later than December 31, 2024. Regardless of when payment commences, Defendant shall deposit a total of \$160,000.00 into the QSF by no later than December 31, 2024.
- b. Commencing in 2025, Defendant shall make sixteen (16) monthly installment payments of \$46,250.00 ("2025-2026 Installments") into the QSF. The first 2025-2026 Installment shall be deposited by Defendant into the QSF by no later than January 31, 2025. All remaining 2025-2026 Installments shall be deposited by Defendant into the QSF by no later than the last day business day of each subsequent month, with the final 2025-2026 Installment, plus any amounts owed by Defendant for employer-side payroll taxes, deposited by no later than June 30, 2026.

Any interest earned on the foregoing installments prior to disbursement of the Gross Settlement Amount (less any applicable fees and charges associated with the establishment and maintenance of the QSF) shall be used to pay Defendant's share of employer-side payroll taxes. If any additional interest remains following payment of employer-side payroll taxes, such amounts shall be credited towards the Gross Settlement Amount. Defendant may, in its sole discretion, prepay any amounts it chooses into the QSF without penalty.

Should Defendant fail to timely make any of the payments as set forth above, Defendant shall be in default of its debt under the terms of this Memorandum of Understanding. Defendant shall have the opportunity to timely cure a default within seven (7) business days from when notice of default is delivered by submitting the necessary installment payment to the Settlement Administrator set forth above. If Defendant does not cure a default within seven (7) business days, then Defendant shall owe the outstanding balance of the Gross Settlement Amount, due immediately and payable

to the Settlement Administrator. Plaintiffs, after providing notice to Defendant and to Defendant's Counsel of the default and expiration of a cure period of seven (7) business days, may apply by regularly noticed motion to have a stipulated judgment entered in the *Silva* Action in favor of Plaintiffs, the Participating Class Members, and PAGA Members against Defendant in the amount of the outstanding balance on the Gross Settlement Amount, plus pre-judgment interest on the amount due at the legal rate, post-judgment interest at the legal rate, and attorneys' fees and costs incurred in the enforcement and collection of the Judgment. In the alternative, Plaintiffs may move by regularly scheduled motion to vacate the Final Approval Order and Judgment previously entered by the Court.

28. Disputes: Any dispute between the parties as to interpretation of the terms stated herein or the remaining terms of the Settlement shall be submitted to Lynn Frank, Esq., whose decision shall be final and binding on the Parties hereto.

29. Intent to be binding: Although the Parties agree to execute a more formal and detailed Joint Stipulation of Settlement, this Memorandum of Understanding is intended by the Parties to be fully binding, and the Court shall have jurisdiction to enforce the terms and conditions of the settlement pursuant to Code of Civil Procedure 664.6 (or the federal equivalent) upon noticed motion of any party. In the event that any party breaches any terms of this Settlement and an action is brought to enforce the terms of the Settlement, the prevailing party in any enforcement action shall be entitled to recover their attorney fees and costs. Moreover, this Memorandum of Understanding shall be admissible and subject to disclosure in any action brought to enforce the terms and conditions of the Settlement, notwithstanding the confidentiality provision of paragraph 30, below.

30. Confidentiality: The Parties and their counsel agree to keep the terms of the Settlement confidential until the filing of Plaintiffs' motion for preliminary approval.

The foregoing sets forth all the material terms of the Settlement and supersedes all prior settlement discussions. In agreement of the foregoing, the Parties and the representatives of the Parties execute this Agreement below.

DATED: Jun 17, 2024

kenny dewan
kenny dewan (Jun 17, 2024 09:11 PDT)
Akua Behavioral Health, Inc.

Name: kenny dewan

Title: CEO

DATED: 05/16/2024

Richard Silva
Richard Silva (May 16, 2024 11:36 PDT)

Plaintiff Richard Silva

DATED: _____

Plaintiff Alicia Delgado

DATED: _____

Avi Attal, Esq.
KAHANA FELD
Attorney for Defendant Akua Behavioral Health,
Inc.

DATED: May 16, 2024

S. Emi Minne
S. Emi Minne, Esq.
PARKER & MINNE, LLP
Attorneys for Plaintiff Richard Silva

DATED: _____

Donald Potter, Esq.
LAW OFFICE OF DONALD POTTER
Attorneys for Plaintiff Alicia Delgado

DATED: _____

Plaintiff Richard Silva

DATED: _____

Plaintiff Alicia Delgado

DATED: May 22, 2024



*as to form only

Avi Attal, Esq.
KAHANA FELD
Attorney for Defendant Akua Behavioral Health,
Inc.

DATED: _____

S. Emi Minne, Esq.
PARKER & MINNE, LLP
Attorneys for Plaintiff Richard Silva

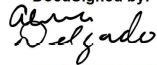
DATED: _____

Donald Potter, Esq.
LAW OFFICE OF DONALD POTTER
Attorneys for Plaintiff Alicia Delgado

DATED: _____

Plaintiff Richard Silva

DATED: 5/20/2024

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Plaintiff Alicia Delgado

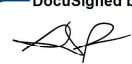
DATED: _____

Avi Attal, Esq.
KAHANA FELD
Attorney for Defendant Akua Behavioral Health,
Inc.

DATED: _____

S. Emi Minne, Esq.
PARKER & MINNE, LLP
Attorneys for Plaintiff Richard Silva

DATED: 5/21/2024

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Donald Potter, Esq.
LAW OFFICE OF DONALD POTTER
Attorneys for Plaintiff Alicia Delgado