

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 5400
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

EMILY TOLOSA, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiffs,

v.

KENSINGTON REDWOOD CITY LLC, a
Virginia Limited Liability Company;
KENSINGTON SENIOR LIVING, LLC, a
Virginia Limited Liability Company; and DOES
1-50, Inclusive,

Defendants.

Case No. 21-CV-03030

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: September 21, 2023
Time: 2:00 p.m.

Judge: Hon. Susan Greenberg
Department: 3

Trial Date: N/A
Action Filed: June 2, 2021

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 This matter having come before the Honorable Susan Greenberg of the Superior Court of the State
3 of California, in and for the County of San Mateo, at 2:00pm on September 21, 2023 , with the attorneys
4 from the JCL Law Firm, APC and Zakay Law Group, APLC as counsel for Plaintiff Emily Tolosa
5 (“Plaintiff”), and counsel from Hanson Bridgett, LLP appearing for Defendant Kensington Redwood
6 City LLC and Defendant Kensington Senior Living, LLC (collectively “Defendants”). The Court,
7 having carefully considered the briefs, argument of counsel and all the matters presented to the Court,
8 and good cause appearing, hereby GRANTS Plaintiff’s Motion for Preliminary Approval of Class and
9 PAGA Action Settlement.

10 **IT IS HEREBY ORDERED:**

11 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA Action
12 Claims and Release of Claims (“Settlement Agreement” or “Agreement”) a true and correct copy of
13 which is attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the Settlement
14 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
15 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

16 2. This Order incorporates by reference the definitions in the Agreement, and all terms
17 defined therein shall have the same meaning in this Order as set forth in the Agreement.

18 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
19 Defendants shall pay is Nine Hundred Thirty Thousand Dollars and Zero Cents (\$930,000). It appears
20 to the Court on a preliminary basis that the settlement amount and terms are fair, adequate, and
21 reasonable as to all potential Class Members when balanced against the probable outcome of further
22 litigation relating to certification, liability, and damages issues. It further appears that investigation and
23 research have been conducted such that counsel for the Parties are able to reasonably evaluate their
24 respective positions. It further appears to the Court that settlement at this time will avoid substantial
25 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further
26 prosecution of the litigation. It further appears that the Settlement has been reached as the result of
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1 intensive, serious, and non-collusive arms-length negotiations.

2 4. The Court preliminarily finds that the Settlement appears to be within the range of
3 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court has
4 reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds
5 that the monetary settlement awards made available to the Class Members are fair, adequate, and
6 reasonable when balanced against the probable outcome of further litigation relating to certification,
7 liability, and damages issues.

8 5. The Agreement specifies for Attorneys' Fees awarded to Class Counsel in the amount of
9 up-to one-third of the Gross Settlement Amount for attorneys' fees, currently estimated to be Three
10 Hundred and Ten Thousand Dollars and Zero Cents (\$310,000.00) **and** an award of Attorneys'
11 Expenses not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), and proposed Service
12 Award to the Class Representative, Emily Tolosa, in an amount not to exceed Ten Thousand Dollars
13 and Zero Cents (\$10,00.00). While these awards appear to be within the range of reasonableness, the
14 Court will not approve the Attorneys' Fees, Attorneys' Expenses, or the Service Award, until the Final
15 Approval Hearing. Class Counsel and the Class Representative will be required to present evidence
16 supporting these requests, including lodestar, prior to final approval.

17 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to certification of
18 a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other
19 proceeding should this Settlement not become final. For settlement purposes only, the Court
20 conditionally certifies the following Class:
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22 all non-exempt employees who are or previously were employed by
23 Kensington Senior Living, LLC, and who performed work in California
24 during the Class Period. The Class Period is June 2, 2017 through May 1,
25 2023.

26 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
27 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class
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1 Members are ascertainable and so numerous that joinder of all members of the Class Members is
2 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
3 community of interest amongst the Class Members with respect to the subject matter of the litigation;
4 (c) the claims of the Class Representative are typical of the claims of the Class Members; (d) the Class
5 Representative will fairly and adequately protect the interests of the Class Members; (e) a class action
6 is superior to other available methods for the efficient adjudication of this controversy; and (f) Class
7 Counsel are qualified to act as counsel for the Class Representative in his individual capacity and as the
8 representative of the Class Members.

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10 8. The Court provisionally appoints plaintiff Emily Tolosa as the representative of the Class
11 Members.

12 9. The Court provisionally appoints the attorneys of the JCL LAW FIRM, APC, and of
13 ZAKAY LAW GROUP, APLC, as Class Counsel for the Class Members.

14 10. The Court hereby approves, as to form and content, the proposed Notice Packet attached
15 to the Agreement as **Exhibit "A"**. The Court finds that the Notice Packet appears to fully, and accurately
16 inform the Class Members of all material elements of the proposed Settlement, including Class
17 Members' right to be excluded from the Class by submitting a written request for exclusion, and of each
18 Class Member's right and opportunity to object to the Settlement. The Court further finds that the
19 distribution of the Notice substantially in the manner and form set forth in the Agreement and this Order
20 meets the requirements of due process, is the most reasonable notice under the circumstances, and shall
21 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the
22 Notice Packet by first class mail, pursuant to the terms set forth in the Agreement.

23 11. The Court hereby appoints Apex Class Actions, LLC, as Settlement Administrator. Within
24 ten (10) business days of this order, Defendants shall provide, to the Settlement Administrator the Class
25 Data, including information regarding Class Members that Defendants will in good faith compile from
26 their records, including each Settlement Class Member's full name; last known address; Social Security
27 Number; start dates and end dates of employment. Within twenty-one (21) calendar days of this Order,
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1 the Settlement Administrator shall mail the Notice Packet to all identified, potential Class Members via
2 first class U.S. Mail using the most current mailing address information available.

3 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
4 Settlement of the Released Claims. Any Class Member may individually choose to opt out of and be
5 excluded from the Settlement of the Released Claims as provided in the Notice by following the
6 instructions for requesting exclusion from the Settlement of the Released Claims that are set forth in the
7 Notice. All requests for exclusion must be postmarked or received by the Response Deadline which is
8 forty-five (45) calendar days after the date the Notice Packet is mailed to the Class Members or, in the
9 case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline.
10 Any such person who chooses to opt out of and be excluded from the Settlement of the Released Claims
11 will not be entitled to an Individual Settlement Payment under the Settlement and will not be bound by
12 the Settlement, or have any right to object, appeal or comment thereon. Class Members who have not
13 requested exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A
14 request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of
15 a group, class, or subclass of individuals is not permitted and will be deemed invalid.
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17 13. Any Class Member who has not opted out may appear at the final approval hearing and
18 may object or express the Class Member's views regarding the Settlement, and may present evidence
19 and file briefs or other papers that may be proper and relevant to the issues to be heard and determined
20 by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the
21 Settlement Administrator mails the Notice Packets to postmark their written objections to the Settlement
22 Administrator.

23 14. A final approval hearing shall be held before this Court on _____at
24 _____AM/PM in Department 3 of the San Mateo County Superior Court to determine all necessary
25 matters concerning the Settlement, including: whether the proposed settlement of the Action on the
26 terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
27 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
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1 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
2 to the Class Members; and to finally approve the Attorneys' Fees, Attorneys' Expenses, Service Award,
3 the PAGA Payment, and the Claims Administration Expenses. All papers in support of the motion for
4 final approval and the motion for Attorneys' Fees, Attorneys' Expenses and Service Award shall be
5 filed with the Court and served on all counsel no later than sixteen (16) court days before the hearing.

6 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder shall
7 be construed as a concession or admission by Defendant in any way, and shall not be used as evidence
8 of, or used against Defendant as, an admission or indication in any way, including with respect to any
9 claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth of any
10 allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
11 Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor
12 any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
13 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
14 limited to, evidence of a presumption, concession, indication or admission by Defendant of any liability,
15 fault, wrongdoing, omission, concession or damage.
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17 16. In the event the Settlement does not become effective in accordance with the terms of the
18 Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to become
19 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
20 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
21 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used,
22 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of the
23 Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.
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1 17. The Court reserves the right to adjourn or continue the date of the final approval hearing
2 and all dates provided for in the Agreement without further notice to Class Members and retains
3 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.
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6 IT IS SO ORDERED.

7 Dated: _____

8 _____
9 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 1

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
Jaclyn Joyce (State Bar #285124)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com
jaclyn@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EMILY TOLOSA, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiff,

v.

KENSINGTON REDWOOD CITY LLC, a
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KENSINGTON SENIOR LIVING, LLC, a
Virginia Limited Liability Company; and
DOES 1-50, inclusive,

Defendants.

Case No.: 21-CIV-03030

[Action Filed: June 2, 2021]

**STIPULATION OF SETTLEMENT OF
CLASS AND PAGA ACTION CLAIMS
AND RELEASE OF CLAIMS**

STIPULATION OF SETTLEMENT OF CLASS AND PAGA ACTION AND RELEASE OF CLAIMS

This Stipulation of Settlement of Class and PAGA Action and Release of Claims is entered into by and between Plaintiff EMILY TOLOSA (hereinafter “Plaintiff” or “Class Representative”), on behalf of herself and on behalf of all putative Class Members and Aggrieved Employees, on the one hand, and Defendant KENSINGTON SENIOR LIVING, LLC (hereinafter, “Defendant”), on the other hand.

A. DEFINITIONS

1. **“Action”** shall mean the putative class and PAGA lawsuit, captioned *Emily Tolosa v. Kensington Redwood City LLC, et al.*, initiated on June 2, 2021, and pending in the Superior Court of the State of California, County of San Mateo, Case No. 21-CIV-03030.
2. **“Aggrieved Employee(s)”** shall mean all non-exempt employees who are or previously were employed by Kensington Senior Living, LLC, and who performed work in California during the PAGA Period.
3. **“Administration Costs”** shall mean the amount paid to the Settlement Administrator from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Settlement Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
4. **“Agreement,” “Settlement” or “Settlement Agreement”** means this Stipulation of Settlement of Class and PAGA Action and Release of Claims.
5. **“Attorneys’ Expenses”** means the amount allocated to Class Counsel for reimbursement of expenses incurred to prosecute the Action, and subject to Court approval.
6. **“Attorneys’ Fees”** means the amount allocated to Class Counsel for reimbursement of reasonable attorney’s fees incurred to prosecute the Action, not to exceed one-third (1/3) of the Gross Settlement Amount, and subject to Court approval. Attorneys’ fees will be divided between Class Counsel as follows: 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC.

- 1 7. **“Class”** or **“Class Members”** means all non-exempt employees who are or
2 previously were employed by Kensington Senior Living, LLC, and who performed
3 work in California during the Class Period.
- 4 8. **“Class Counsel”** shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC,
5 and Shani Zakay, Esq. of Zakay Law Group, APLC.
- 6 9. **“Class Data”** means Class Members’ and Aggrieved Employees’ identifying
7 information, including their full name; last known mailing address; last known phone
8 number, Social Security Number; number of Class Period Workweeks; and number
9 of PAGA Pay Periods.
- 10 10. **“Class Period”** means the period beginning June 2, 2017 through May 1, 2023.
- 11 11. **“Class Representative”** or **“Plaintiff”** shall mean Emily Tolosa.
- 12 12. **“Court”** means the Superior Court for the State of California, County of San Mateo,
13 currently presiding over the Action.
- 14 13. **“Defendant”** shall mean Kensington Senior Living, LLC.
- 15 14. **“Defense Counsel”** shall mean Sandra Rappaport and Josue Aparicio of Hanson
16 Bridgett LLP.
- 17 15. **“Effective Date”** means the date by when both of the following have occurred: (a)
18 the Court enters a Judgment on its Order granting Final Approval of the Settlement;
19 and (b) the Judgment is final. The Judgment is final as of the latest of the following
20 occurrences: (i) if no Settlement Class Member objects to the Settlement, the date of
21 the Court’s entry of the Order granting Final Approval of the Settlement; (ii) if one
22 or more Settlement Class Members object to the Settlement, the day after the deadline
23 for filing a notice of appeal from the Judgment; or (iii) if a timely appeal from the
24 Judgment is filed, the day after the appellate court affirms the Judgment and issues a
25 remititur such that the Final Approval Order and Judgment concerning the Action is
26 no longer subject to further judicial review.
- 27 16. **“Final Approval”** means the Court’s order granting final approval of the Settlement.

17. **“Final Judgment”** or **“Judgment”** means the judgment entered by the Court upon granting Final Approval of the Settlement.
18. **“Funding Date”** shall mean the date Kensington Senior Living, LLC has paid the entire Gross Settlement Amount and paid the employer side payroll taxes to the Settlement Administrator in accordance with the terms of this Agreement.
19. **“Gross Settlement Amount”** or **“GSA”** means the settlement payment of Nine Hundred and Thirty Thousand Dollars and Zero Cents (\$930,000.00) that Kensington Senior Living, LLC will be obligated to pay into the QSF in connection with this Settlement. The GSA is exclusive of employer-side payroll tax payments due and payable to federal and state tax authorities as a result of this Settlement, if any.
20. **“Individual Class Payment”** means the Settlement Class Members’ pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
21. **“Individual PAGA Payment”** means the Aggrieved Employees’ (including Non-Participating Class Members who are Aggrieved Employees) pro rata share of the PAGA Payout Fund calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
22. **“LWDA”** means the California Labor and Workforce Development Agency.
23. **“LWDA Payment”** means Seventy-Five Percent (75%) of the PAGA Payment paid to the LWDA pursuant to Labor Code section 2699, subd. (i).
24. **“Non-Participating Class Member”** means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
25. **“Net Settlement Amount”** or **“NSA”** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Attorneys’ Fees, Attorneys’ Expenses, Service Award, PAGA Payment, and Administration Costs.
26. **“Notice Packet”** or **“Class Notice”** means the Court approved NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT

1 APPROVAL, to be mailed to Class Members in the form, without material variation,
2 attached as **Exhibit A** and incorporated by reference into this Agreement (other than
3 formatting changes to facilitate printing by the Settlement Administrator).

4 27. **“Operative Complaint”** shall mean the Complaint on file in the Action filed on June
5 2, 2021.

6 28. **“PAGA”** means the California Labor Code Private Attorneys General Act of 2004,
7 Labor Code § 2698 *et seq.*

8 29. **“PAGA Payment”** shall mean the total amount of PAGA civil penalties to be
9 allocated from the Gross Settlement Amount (\$50,000), with 25% of the payment
10 going to the Aggrieved Employees (“PAGA Payout Fund”) and 75% of the payment
11 going to the LWDA (“LWDA Payment”). The amount of the PAGA Payment is
12 subject to Court approval pursuant to California Labor Code section 2699(l). Any
13 reallocation of the Gross Settlement Amount to increase the PAGA Payment will not
14 constitute grounds by either party to void this Agreement, so long as the Gross
15 Settlement Amount remains the same.

16 30. **“PAGA Payout Fund”** means Twenty-Five Percent (25%) of the PAGA Payment
17 from which Individual PAGA Payments to Aggrieved Employees will be made.

18 31. **“PAGA Notice”** means Plaintiff’s March 29, 2021 letter to the LWDA and Defendant
19 providing notice pursuant to Labor Code section 2699.3, subd. (a).

20 32. **“PAGA Pay Periods”** means any pay period of employment during which an
21 Aggrieved Employee worked for Defendant for at least one day, during the PAGA
22 Period.

23 33. **“PAGA Period”** means the period of March 29, 2020 through May 1, 2023.

24 34. **“Parties”** means Plaintiff and Defendant, collectively, and **“Party”** shall mean either
25 Plaintiff or Defendant, individually.

26 35. **“Preliminary Approval”** or **“Preliminary Approval Order”** means the Court’s
27 Order granting Preliminary Approval of the Settlement.

- 1 36. **“QSF”** means the Qualified Settlement Fund established, designated and maintained
2 by the Settlement Administrator to fund the Gross Settlement Amount.
- 3 37. **“Released Class Claims”** means the claims being released by the Settlement Class
4 Members as described in Paragraph E(1) below.
- 5 38. **“Released PAGA Claims”** means the claims being released by the Aggrieved
6 Employees (including Non-Participating Class Members who are Aggrieved
7 Employees) as described in Paragraph E(2) below.
- 8 39. **“Released Parties”** shall mean Defendants Kensington Senior Living, LLC and
9 Kensington Redwood City, LLC, and each of their past, present, and/or future
10 officers, directors, shareholders, exempt-employees, representatives, administrators,
11 agents, principals, accountants, auditors, consultants, attorneys, insurers and
12 reinsurers, and their respective heir(s) and/or assigns, successors and predecessors in
13 interest, affiliates, operating entities, divisions, facilities, parent or related corporate
14 entities/companies, subsidiaries and affiliated corporations and entities.
- 15 40. **“Response Deadline”** means the date forty-five (45) calendar days after the
16 Settlement Administrator mails the Class Notice to Class Members and the last date
17 on which Class Members may submit requests for exclusion or objections to the
18 Settlement.
- 19 41. **“Service Award”** or **“Class Representative Service Award”** means the amount
20 paid to the Class Representative from the Gross Settlement Amount for initiating the
21 Action and providing services in support of the Action, not to exceed Ten Thousand
22 Dollars and Zero Cents (\$10,000), and subject to Court approval.
- 23 42. **“Settlement Administrator”** means Apex Class Action, the neutral entity the Parties
24 have agreed to appoint to administer the Settlement, as described in Paragraph G(1)
25 below.
- 26 43. **“Settlement Class Members”** or **“Settlement Class”** means all Class Members who
27 did not submit a timely and valid request for exclusion from the Settlement.

44. **“Settlement Group Members”** means and includes Aggrieved Employees, Settlement Class Members, and Non-Participating Class Members who qualify as Aggrieved Employees.

45. **“Workweek” or “Class Period Workweek”** means any week during which a Class Member worked for Defendant for at least one day during the Class Period.

B. RECITALS

1. On March 29, 2021, Plaintiff submitted a PAGA Notice to the LWDA and served the same on Defendant, in accordance with the requirements of Labor Code section 2699.3(a).

2. On June 2, 2021, Plaintiff filed the Action, alleging claims for: (a) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*; (b) Failure to Pay Minimum Wage in Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1; (c) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (d) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the Applicable Wage Order; (e) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the Applicable Wage Order; (f) Failure to Provide Accurate Itemized Wage Statements in Violation Cal. Lab. Code §§ 226 and 226.2; (g) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (h) Violations of PAGA in Violation of Cal. Lab. Code §§ 2698 *et seq.*

3. The Class Representative believes she has claims based on alleged violations of the California Labor Code, and the Industrial Welfare Commission Wage Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this Action is manageable as a PAGA representative action.

4. The Class Representative is represented by Class Counsel. Class Counsel investigated the facts relevant to the Action, including conducting an independent investigation as

1 to the allegations, reviewing documents and information exchanged through informal
2 discovery, and reviewing documents and information provided by Defendant
3 pursuant to informal requests for information to prepare for mediation. Defendant
4 produced for the purpose of settlement negotiations certain employment data
5 concerning the Class, which Class Counsel reviewed and analyzed with the assistance
6 of an expert.

- 7 5. On February 1, 2022, the Parties participated in mediation presided over by Tripper
8 Ortman, Esq., an experienced mediator of wage and hour class and PAGA actions.
9 Although the mediation concluded without a settlement, the Parties accepted a
10 Mediator's settlement proposal, which was subsequently memorialized in the form of
11 a Memorandum of Understanding.

12 **C. ACKNOWLEDGEMENTS**

- 13 1. **Estimated Number of Putative Class Members.** Based on its records, Defendant
14 estimates that, as of the date of this Settlement Agreement, there are approximately
15 329 putative Class Members.
- 16 2. **Memorandum of Understanding.** This Agreement replaces and supersedes the
17 Memorandum of Understanding and any other agreements, understandings, or
18 representations between the Parties. This Agreement represents a compromise and
19 settlement of highly disputed claims.
- 20 3. **Conditional Certification for Settlement Purposes Only.** Solely for the purpose of
21 effectuating this Settlement, and subject to Court approval, the Parties hereby
22 stipulate to the conditional certification of the Settlement Class. The Parties agree that
23 certification for purposes of Settlement is not an admission that class certification is
24 otherwise proper under Section 382 of the Code of Civil Procedure. The Parties agree
25 that if, for any reason, the Settlement is not preliminarily and finally approved, the
26 conditional certification of the Settlement Class will be of no force or effect and shall
27 become null and void; does not constitute an admission by Defendant that class

1 certification is proper; shall be inadmissible for any purpose in any action; shall have
2 no bearing on the issue of whether or not certification would be appropriate in a non-
3 settlement context; will not be deemed admissible in this or any other proceeding; and
4 the Parties shall revert to the respective positions they held prior to entering into this
5 Agreement, including that the Parties will litigate the issue of class certification.
6 Defendant expressly reserves its right and declares that it intends to oppose class
7 certification vigorously should this Settlement not be granted Final Approval.

8 4. **Fair, Adequate, and Reasonable Settlement.** The Parties and their respective
9 counsel believe and warrant that the Settlement Agreement reflects a fair, reasonable,
10 and adequate settlement of the Action. The Settlement was arrived at through arm's-
11 length negotiations, considering all relevant factors, current and potential.

12 5. **Benefits to Settlement Group Members.** Plaintiff and Class Counsel recognize the
13 expense and length of continued proceedings necessary to continue the litigation
14 against Defendant through trial and through any possible appeals. Plaintiff and Class
15 Counsel also have taken into account the uncertainty and risk of further litigation, the
16 potential outcome, and the difficulties and delays inherent in such litigation.
17 Accordingly, based on their own thorough, independent investigation and evaluation
18 of this case, Plaintiff and Class Counsel strongly believe the settlement set forth in
19 this Agreement is a fair, adequate, and reasonable settlement, and is in the best interest
20 of the Settlement Group Members.

21 6. **Benefits to Defendant.** While Defendant maintains that it complied with applicable
22 law at all times and that Plaintiff's claims are meritless, it recognizes that the defense
23 of the Action will be protracted and expensive. Substantial amounts of time, energy,
24 and resources of Defendant have been and, unless this settlement is made, will
25 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant,
26 therefore, enters into this Agreement and conditional Settlement with no admission
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of liability whatsoever, and for the sole purpose of compromising and settling the Action to avoid the cost, uncertainty and operational burden of continuing litigation.

7. **No Admission of Liability.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims and allegations in the Action have merit or that Defendant bears any liability to Plaintiff, the State of California, or the Settlement Group Members on any alleged claims or any other claims. Defendant vigorously denies the claims and each of the allegations asserted in this Action. Defendant further specifically denies any non-compliance, intentional or otherwise, with the statutory requirements of the California Labor Code and/or the applicable IWC Wage Orders. Defendant also denies that Plaintiff or any of the Settlement Group Members have suffered damages by virtue of Defendant's conduct, or that Defendant's conduct warrants penalization.

8. **Reservation of Rights.** Defendant expressly reserves the right and declares that it intends to oppose and defend against this Action vigorously should this Settlement not be granted approval by the Court or be modified or reversed on appeal or otherwise not become final. If for any reason this Agreement does not become effective, Defendant reserves the right to defend against this Action on any basis. Defendant does not concede the merits of Plaintiff's contentions, nor the existence of any damages or penalties, but has agreed to resolve the litigation through this Settlement in recognition of the expense and risk of continuing with the litigation and in the belief that the settlement is fair, adequate and reasonable. Therefore, in entering into this Agreement, it is the Parties' mutual intention and agreement that if, for any reason, this Agreement does not become final, both Parties will retain all rights to prosecute and defend against this Action, and the fact of this Settlement may not be used by either Party in support of any argument against the other. Defendant will not be deemed to have waived, limited, or affected in any way any of its claims, rights,

remedies, objections or defenses in the Action. Plaintiff will not be deemed to have waived, limited or affected in any way any of her claims, rights, remedies, objections or arguments in the Action.

D. SETTLEMENT TERMS AND CONDITIONS

1. **Gross Settlement Amount (“GSA”).** In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant agrees to pay a Gross Settlement Amount of Nine Hundred and Thirty Thousand Dollars and Zero Cents (\$930,000.00), and to separately pay its share of employer-side payroll taxes due and payable to federal and state tax authorities as a result of this Settlement, if any. The Parties agree that this is a non-reversionary Settlement and that no portion of the GSA shall revert back to Defendant. Other than Defendant’s share of employer-side payroll taxes and/or pursuant to Paragraph F(3) below, Defendant shall not be required to pay more than the GSA. Defendant is under no obligation to pay the GSA (or any employer-side payroll taxes) prior to the deadline stated in Paragraph I(2) of this Agreement.

2. **Payments from the GSA.** The Settlement Administrator will make and deduct the following payments from the GSA, in the amounts specified by the Court in the Final Approval:

a. **Administration Costs.** A payment to the Settlement Administrator for costs and expenses incurred to administer this Settlement, not to exceed Six Thousand Five Hundred Dollars and Zero Cents (**\$6,500.00**), except for a showing of good cause and as approved by the Court. To the extent Settlement Administration costs and expenses are less or the Court approves payment less than \$6,500.00, the Settlement Administrator will allocate the remainder to the Net Settlement Amount (“NSA”).

b. **Service Award.** A payment to the Class Representative not to exceed Ten Thousand Dollars and Zero Cents (**\$10,000.00**), and subject to Court approval. The Service Award is in addition to any individual payment the Class Representative is

1 entitled to as a Settlement Group Member. If the Court approves a Service Award less
2 than the amount requested, the Settlement Administrator will allocate the remainder
3 to the NSA. The Settlement Administrator will report the Service Award using IRS
4 Form 1099. Plaintiff assumes full responsibility and liability for employee taxes
5 owed on the Service Award payment.

6 c. ***Attorneys' Fees.*** A payment to Class Counsel not to exceed one-third (1/3)
7 of the GSA, which is currently estimated to be Three Hundred Ten Thousand Dollars
8 and Zero Cents (**\$310,000.00**), and subject to Court approval. If the Court approves
9 an Attorneys' Fees payment less than the amount requested, the Settlement
10 Administrator will allocate the remainder to the NSA. The Settlement Administrator
11 will report the Attorneys' Fees payment using IRS Form 1099. Class Counsel
12 assumes full responsibility and liability for taxes owed on the Attorneys' Fees
13 payment and holds Defendant harmless, and indemnifies Defendant, from any dispute
14 or controversy regarding any division or sharing of the Attorneys' Fees payment.

15 d. ***Attorneys' Expenses.*** A payment to Class Counsel not to exceed Thirty
16 Thousand Dollars and Zero Cents (**\$30,000.00**) for actual litigation expenses incurred,
17 which is subject to Court approval. If the Court approves an Attorneys' Expense
18 payment less than the amount requested, the Settlement Administrator will allocate
19 the remainder to the NSA. The Settlement Administrator will report the Attorneys'
20 Expense payment using IRS Form 1099. Class Counsel assumes full responsibility
21 and liability for taxes owed on the Attorneys' Expense payment and agrees to hold
22 Defendant harmless, and indemnify Defendant, from any dispute or controversy
23 regarding any division or sharing of the Attorneys' Expense payment.

24 e. ***PAGA Payment.*** Fifty Thousand Dollars and Zero Cents (**\$50,000.00**) of the
25 GSA shall be considered payment for alleged civil penalties under the PAGA
26 ("PAGA Payment"). If the Court approves a PAGA Payment of less than the amount
27 requested, the Settlement Administrator will allocate the remainder to the NSA.

3. **PAGA Payment Allocation.** Subject to Court approval, the PAGA Payment will be allocated as follows:

a. ***To the LWDA.*** The Settlement Administrator shall pay to the LWDA Seventy-Five Percent (75%) of the PAGA Payment, which is currently estimated to be Thirty Seven Thousand Five Hundred Dollars and Zero Cents (**\$37,500.00**).

b. ***To Aggrieved Employees.*** The Settlement Administrator shall allocate Twenty-Five Percent (25%) of the PAGA Payment to create the PAGA Payout Fund to be paid out to Aggrieved Employees, which is currently estimated to be Twelve Thousand Five Hundred Dollars and Zero Cents (**\$12,500.00**). Each Aggrieved Employee will receive a proportionate share of the PAGA Payout Fund that is equal to the number of PAGA Pay Periods he or she worked for Defendant based on the Class Data provided by Defendant.

c. ***Calculation of Individual PAGA Payments.*** The Settlement Administrator will calculate each Individual PAGA Payment by (i) dividing the amount of the PAGA Payout Fund (currently estimated to be \$12,500.00) by the total number of pay periods collectively worked by all Aggrieved Employees during the PAGA Period, and (ii) multiplying the result by the number of Pay Periods each Aggrieved Employee worked during the PAGA Period. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Individual PAGA Payment ties directly to the amount of PAGA Pay Periods that he or she worked.

d. ***Tax Allocation of Individual PAGA Payments.*** The Individual PAGA Payments shall be allocated and treated as 100% civil penalties and shall be reported on IRS Form 1099. Payroll tax withholdings and deductions will not be withheld from these Individual PAGA Payments. Plaintiff and each Aggrieved Employee bears the full responsibility for payment of any taxes or withholding that are found to be owed from the Individual PAGA Payments.

4. **Net Settlement Amount (“NSA”).** The Net Settlement Amount (“NSA”) is to be paid to Settlement Class Members as Individual Class Payments. The NSA includes the GSA Amount, less the following payments in the amounts approved by the Court: Administration Costs; Service Award; Attorneys’ Fees; Attorneys’ Expenses; and PAGA Payment.

a. ***Calculation of Individual Class Payments.*** An Individual Class Payment shall be made to each Settlement Class Member. Individual Class Payments shall be calculated by (a) dividing the NSA by the total number of Workweeks collectively worked by all Settlement Class Members during the Class Period, and (b) multiplying the result by the number of Workweeks worked by each individual Settlement Class Member. One day worked in a given Workweek will be credited as a Workweek for purposes of this calculation. Therefore, the value of each Individual Class Payment ties directly to the amount of Class Period Workweeks that he or she worked.

b. ***Non-Participating Class Members.*** Non-Participating Class Members will not receive an Individual Class Payment. The Settlement Administrator will allocate amounts equal to their Individual Class Payments in the NSA for distribution to Settlement Class Members on a pro rata basis.

c. ***Tax Allocation of Individual Class Payments.*** Individual Class Payments to the Settlement Class Members shall be apportioned as follows: 33.33% as payment for alleged unpaid wages, 33.33% as alleged unpaid interest, and 33.33% as alleged civil and statutory penalties. The Settlement Administrator will issue IRS W-2 Forms for alleged unpaid wages, and IRS 1099 Forms will be issued for alleged unpaid interest and alleged civil and statutory penalties. Plaintiff and each Settlement Class Member bear the full responsibility for payment of any taxes or withholding that are found to be owed from the Individual Class Payment.

1 **E. RELEASES OF CLAIMS**

- 2 1. **Released Claims by Settlement Class Members.** Upon entry of Final Judgment and
3 funding of the GSA, in exchange for the consideration set forth in this Agreement,
4 Plaintiff and the Settlement Class Members will have forever and completely released
5 Defendant and the Released Parties from any and all claims alleged in the Operative
6 Complaint, or which could have been alleged in the Operative Complaint based on the
7 facts alleged, which occurred during the Class Period, and expressly excluding all
8 other claims, including claims for vested benefits, wrongful termination,
9 unemployment insurance, disability, social security, workers' compensation, and class
10 claims outside of the Class Period. Also excluded from this release are the PAGA
11 Claims, which are separately released herein below.
- 12 2. **Released PAGA Claims by Aggrieved Employees.** Upon entry of Final Judgment
13 and funding of the GSA, in exchange for the consideration set forth in this Agreement,
14 Plaintiff, the LWDA, the State of California and all Aggrieved Employees will have
15 forever and completely released Defendant and the Released Parties from any and all
16 PAGA claims for PAGA civil penalties alleged in the Operative Complaint and
17 Plaintiff's PAGA Notice to the LWDA, or that could have reasonably been alleged in
18 the Operative Complaint or Plaintiff's PAGA Notice based on the facts alleged, which
19 occurred during the PAGA Period ("Released PAGA Claims"), and expressly
20 excluding all other claims, including claims for vested benefits, wrongful termination,
21 unemployment insurance, disability, social security, workers' compensation, and
22 PAGA claims outside of the PAGA Period. The express purpose of this Settlement is
23 to forever bar Plaintiff, the LWDA, the State of California, and any Aggrieved
24 Employees from acting on behalf of themselves or purporting to act on behalf of the
25 LWDA to assert any of the Aggrieved Employees' Released PAGA Claims against
26 Defendant and the Released Parties in any future litigation.

3. **Released Claims of Plaintiff.** In exchange for the consideration provided by Defendant under this Agreement, Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge the Released Parties from any and all claims, transactions, or occurrences, including, all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all individual PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint or Plaintiff's PAGA Notice to the LWDA. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights and benefits, if any, of section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

F. MOTION FOR PRELIMINARY APPROVAL

1. **Preliminary Approval Motion.** Class Counsel is responsible for expeditiously drafting and filing a Motion for Order Granting Preliminary Approval and supporting papers no later than sixty (60) calendar days after the full execution of this Agreement,

1 and obtaining a prompt hearing date for the Motion for Order Granting Preliminary
2 Approval.

3 2. **Drafts of Motion Papers.** Class Counsel will provide Defense Counsel with a draft
4 of all documents necessary for obtaining Preliminary Approval at least five (5)
5 business days prior to the filing of the Motion, including:

6 a. A draft of the notice, and memorandum in support, of the Motion for Order
7 Granting Preliminary Approval that includes an analysis of the Settlement under
8 *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code
9 Section 2699, subd. (f)(2);

10 b. A draft proposed Order Granting Preliminary Approval of the Class Action
11 Settlement and Approval of PAGA Settlement;

12 c. A signed declaration from the Settlement Administrator attaching its “not to
13 exceed” bid for administering the Settlement and attesting to its willingness to serve;
14 competency; operative procedures for protecting the security of Class Data; amounts
15 of insurance coverage for any data breach, defalcation of funds or other misfeasance;
16 all facts relevant to any actual or potential conflicts of interest with Class Members
17 and/or the proposed Cy Pres Recipient; and the nature and extent of any financial
18 relationship with Plaintiff, Class Counsel, Defendant, or Defense Counsel;

19 d. A signed declaration from Plaintiff confirming her willingness and
20 competency to serve and disclosing all facts relevant to any actual or potential
21 conflicts of interest with Class Members, and/or the Administrator and/or the
22 proposed Cy Pres Recipient;

23 e. A signed declaration from each Class Counsel firm attesting to its
24 competency to represent the Class Members; its timely transmission to the LWDA of
25 all necessary PAGA documents; and all facts relevant to any actual or potential
26 conflict of interest with Class Members, the Settlement Administrator, and/or the Cy
27 Pres Recipient.

- 1 3. **Class Size.** Defendant represents that the Class is comprised of 329 individuals who
2 collectively worked approximately 26,500 Workweeks during the Class Period. One
3 week prior to the deadline for filing of the Motion for Preliminary Approval,
4 Defendant will provide Class Counsel with a declaration under penalty of perjury
5 confirming the updated number of Class Members and Workweeks during the Class
6 Period. If the number of workweeks during the Class Period increases by more than
7 8% of the estimate stated herein, the Gross Settlement Amount will increase
8 proportionally for the number of Workweeks over 108% of 26,500, or 28,620.
- 9 4. **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for
10 Preliminary Approval and/or the supporting declarations and documents, Class
11 Counsel and Defense Counsel will expeditiously work together on behalf of the
12 Parties, and in good faith, to resolve the disagreement. If the Court does not grant
13 Preliminary Approval or conditions Preliminary Approval on any material change to
14 this Agreement, Class Counsel and Defense Counsel will expeditiously work together
15 on behalf of the Parties, and in good faith, to modify the Agreement and otherwise
16 satisfy the Court's concerns.
- 17 5. **Submission to Settlement Administrator.** Class Counsel is responsible for delivering
18 the Court's Preliminary Approval Order to the Settlement Administrator.
- 19 6. **Notice of Settlement to the LWDA.** Class Counsel shall submit a copy of this
20 Agreement to the LWDA at the same time it is submitted to the Court in accordance
21 with the requirements set forth in Section 2699(l)(2). Class Counsel shall also be
22 responsible for timely submitting to the LWDA a copy of the Court's Judgment and
23 any other orders that award or deny civil penalties to the LWDA.

24 **G. SETTLEMENT ADMINISTRATION**

- 25 1. **Settlement Administrator.** The Parties agree to use Apex Class Action LLC to serve
26 as the Settlement Administrator to administer the Settlement. All of the Settlement
27 Administrator's costs and fees shall be paid from the Administration Costs payment,

not to exceed Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00), except for a showing of good cause and as approved by the Court. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.

2. **Qualified Settlement Fund (“QSF”).** The Settlement Administrator shall establish a Qualified Settlement Fund (“QSF”) for the benefit of the Settlement Group Members and from which all payments under this Agreement shall be paid. The Settlement Administrator shall have its own Employer Identification Number under IRS Form W-9 and shall use its own Employer Identification Number to transmit the required employers’ and employees’ share of the withholdings, if any, to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a QSF under U.S. Treasury Regulation section 468B-1 and section 468B of the Internal Revenue Code of 1986, as amended (the “Code”). The QSF shall be an interest-bearing account at a federally insured bank that is mutually acceptable to the Parties and the Settlement Administrator.

a. ***QSF Administration.*** The Settlement Administrator shall: (1) open and administer the QSF in such a manner as to qualify and maintain the qualification of the QSF as a “Qualified Settlement Fund” under Section 468B of the Code and Treas. Reg. Section 1.468B-1; (2) satisfy all federal, state, and local income and other tax reporting, return, and filing requirements with respect to Defendant and the QSF and any interest or other income earned by the QSF; and (3) satisfy out of the QSF all (i) taxes (including any estimated taxes, interest, or penalties) with respect to the interest or other income earned by the QSF, and (ii) fees, expenses, and costs incurred in connection with the opening and administration of the QSF and the performance of its duties and functions as described in this Agreement. The aforementioned taxes,

1 fees, costs, and expenses shall be treated as, and included in, the costs of administering
2 the QSF and as Settlement Administration Costs.

3 b. ***Tax Reporting.*** The Settlement Administrator shall provide copies to
4 Defendant of any federal, state, and local income or other tax reporting, return, and
5 filing prepared on Defendant's behalf. The Parties agree to cooperate with the
6 Settlement Administrator and one another to the extent reasonably necessary to carry
7 out the provisions of this Paragraph. The Settlement Administrator shall be treated as
8 an "administrator" as defined at Treasury Regulation section 1.468B-2(k) for
9 purposes of federal and state income tax reporting with respect to the distributions
10 and payments made under this Agreement. Accordingly, Forms 1099 will be
11 distributed by the Settlement Administrator at times and in the manner required by
12 the Code and consistent with this Agreement. If the Code, the regulations
13 promulgated thereunder, or other applicable tax law, is changed after the date of this
14 Agreement, the processes set forth in this section may be modified in a manner to
15 comply with any such changes.

16 3. **Settlement Administrator Duties.** The Settlement Administrator shall be responsible
17 for performing all tasks to be performed or observed by the Administrator contained
18 in this Agreement, including, but not limited to the following:

19 a. ***Email Address and Toll-Free Number.*** The Settlement Administrator will
20 establish, maintain and monitor a webpage, an email address and a toll-free telephone
21 number to receive calls and emails from Class Members and Aggrieved Employees.

22 b. ***Requests for Exclusion (Opt-outs) and Exclusion List.*** The Settlement
23 Administrator will promptly review on a rolling basis Requests for Exclusion to
24 ascertain their validity. Not later than five (5) calendar days after the expiration of the
25 deadline for submitting Requests for Exclusion, the Settlement Administrator shall
26 email a list to Class Counsel and Defense Counsel containing (a) the names and other
27 identifying information of Class Members who have timely submitted valid Requests

for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

c. **Weekly Reports.** The Settlement Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Settlement Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

4. **Class Data.** No later than ten (10) business days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Data, in the form of a Microsoft Excel spreadsheet, for purposes of preparing and mailing Notice Packets, as explained below in Paragraph (G)(6)(a).

5. **Maintaining Employee Privacy.** To protect employee privacy rights, the Settlement Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Settlement Administrator employees who need access to the Class Data to effect and perform under this Agreement.

6. **Notice Procedure.** No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel and Defense Counsel that the data has been received and state the number of Settlement Class Members, Aggrieved Employees, Class Period Workweeks, and PAGA Pay Periods in the Class Data.

a. **Notice Packets.** The Notice Packet shall contain the Class Notice in a form substantially similar to the form attached as **Exhibit A**. The Class Notice shall inform

1 Class Members and Aggrieved Employees that they need not do anything in order to
2 receive an Individual Class Payment and/or an Individual PAGA Payment, and to
3 keep the Settlement Administrator apprised of their current mailing address, to which
4 the Individual Settlement Payments and/or PAGA Class Members' individual shares
5 of the PAGA Settlement will be mailed following the Funding Date. The Class Notice
6 will also advise the Aggrieved Employees that they will release the Released PAGA
7 Claims and will receive their Individual PAGA Payment regardless of whether they
8 request to be excluded from the Settlement.

9 b. ***Mailing Envelope.*** The Notice Packet's mailing envelope shall include the
10 following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
11 ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A
12 PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS
13 EXPLAINED IN THE ENCLOSED NOTICE."

14 c. ***Notice by First Class U.S. Mail.*** Upon receipt of the Class Data, the
15 Settlement Administrator will perform a search based on the National Change of
16 Address Database to update and correct any known or identifiable address changes.
17 No later than twenty-one (21) calendar days after Preliminary Approval of the
18 Settlement, the Settlement Administrator shall mail copies of the Notice Packet to all
19 Class Members and Aggrieved Employees via regular First-Class U.S. Mail and
20 electronic mail. The Settlement Administrator shall exercise its best judgment to
21 determine the current mailing address for each Class Member and Aggrieved
22 Employee. The address identified by the Settlement Administrator as the current
23 mailing address shall be presumed to be the best mailing address for each Class
24 Member.

25 d. ***Undeliverable Notices.*** Any Notice Packets returned to the Settlement
26 Administrator as non-delivered on or before the Response Deadline shall be re-mailed
27 to any forwarding address provided. If no forwarding address is provided, the

1 Settlement Administrator shall promptly attempt to determine a correct address by
2 lawful use of skip-tracing, or other search using the name, address and/or Social
3 Security number of the Class Member involved, and shall then perform a re-mailing,
4 if another mailing address is identified by the Settlement Administrator. In addition,
5 if any Notice Packets, which are addressed to Class Members who are currently
6 employed by Defendant, are returned to the Settlement Administrator as non-
7 delivered and no forwarding address is provided, the Settlement Administrator shall
8 notify Defendant. Defendant will request that the currently employed Class Member
9 provide a corrected address, and transmit to the Administrator any corrected address
10 provided by the Class Member.

11 e. ***Extended Response Deadline for Re-Mailed Notices.*** Class Members who
12 received a re-mailed Notice Packet shall have their Response Deadline extended an
13 additional fifteen (15) calendar days beyond the forty-five (45) calendar days
14 otherwise provided. The Settlement Administrator will inform the Class Member of
15 the extended deadline with the re-mailed Class Notice.

16 7. **Requests for Exclusion (Opt-Outs).** Class Members who wish to exclude
17 themselves (opt-out of) from the Class Settlement must send the Settlement Administrator,
18 by fax, email, or mail, a signed written Request for Exclusion not later than forty-five (45)
19 calendar days after the Settlement Administrator mails the Class Notice (plus an additional
20 15 calendar days for Class Members whose Class Notice is re-mailed). A Request for
21 Exclusion is a letter from a Class Member or his/her representative that reasonably
22 communicates the Class Member's election to be excluded from the Settlement and includes
23 the Class Member's name, address and email address or telephone number. To be valid, a
24 Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
25 Deadline.

26 a. ***Settlement Class Members.*** Every Class Member who does not submit a
27 timely and valid Request for Exclusion is deemed to be a Settlement Class Member

1 under this Agreement, entitled to all benefits and bound by all terms and conditions
2 of the Settlement, including the Settlement Class Members' Releases set forth in
3 Paragraph E(1) of this Agreement, regardless of whether the Settlement Class
4 Member actually receives the Class Notice or objects to the Settlement.

5 b. ***Non-Participating Class Members.*** Every Class Member who submits a valid
6 and timely Request for Exclusion is a Non-Participating Class Member and shall not
7 receive an Individual Class Payment or have the right to object to the class action
8 components of the Settlement.

9 c. ***Non-Participating Class Members Who are Aggrieved Employees.*** Because
10 future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
11 Participating Class Members who are Aggrieved Employees are deemed to release
12 the claims identified in Paragraph E(2) of this Agreement and are eligible for an
13 Individual PAGA Payment.

14 8. **Challenges to Workweek or Pay Period Calculations.** Each Class Member or
15 Aggrieved Employee shall have forty-five (45) calendar days after the Settlement
16 Administrator mails Class Notice (plus an additional 15 calendar days for Class Members
17 whose Class Notice is re-mailed) to challenge the number of Class Period Workweeks and/or
18 PAGA Pay Periods (if any) allocated to them in the Class Notice. The Class Member may
19 challenge the allocation by communicating with the Settlement Administrator via fax, email
20 or mail. The Settlement Administrator must encourage the challenging Class Member to
21 submit supporting documentation. In the absence of any contrary documentation, the
22 Settlement Administrator is authorized to presume that the Workweeks and PAGA Pay
23 Periods contained in the Class Notice are correct so long as they are consistent with the Class
24 Data. The Settlement Administrator's determination of each Class Member's allocation of
25 Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise
26 susceptible to challenge. The Settlement Administrator shall promptly provide copies of all
27

1 challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and
2 Class Counsel and the Settlement Administrator's determination of the challenges.

3 9. **Objections to Settlement.** Only Settlement Class Members may object to the class
4 action components of the Settlement and/or this Agreement, including contesting the fairness
5 of the Settlement, and/or the amounts requested for the Attorneys' Fees payment, Attorneys'
6 Expense Payment and/or Service Award.

7 a. ***Written Objections.*** Settlement Class Members may send written objections
8 to the Administrator, by fax, email, or mail. A Settlement Class Member who elects
9 to send a written objection to the Settlement Administrator must do so not later than
10 forty-five (45) calendar days after the Settlement Administrator's mailing of the Class
11 Notice (plus an additional 15 calendar days for Class Members whose Class Notice
12 was re-mailed). The written objection must be signed by the Settlement Class
13 Member and state: (1) the case name and number; (2) the full name of the Settlement
14 Class Member; (3) the address of the Settlement Class Member; (4) the last four digits
15 of the Settlement Class Member's Social Security number; (5) the basis for the
16 objection; and (6) if the Settlement Class Member intends to appear at the Final
17 Approval Hearing.

18 b. ***Verbal Objections.*** Settlement Class Members will have a right to appear at
19 the Final Approval Hearing to have their objections heard by the Court regardless of
20 whether they submitted a written objection. At no time shall any of the Parties or
21 their counsel seek to solicit or otherwise encourage Class Members to file or serve
22 written objections to the Settlement or appeal from the Order and Final Judgment.
23 Class Members who submit a written request for exclusion may not object to the
24 Settlement. Class Members may not object to the PAGA Settlement.

25 c. ***Non-Participating Class Members.*** Non-Participating Class Members have
26 no right to object to any of the class action components of the Settlement.

1 **H. FINAL APPROVAL**

2 1. **Final Approval Motion.** Class Counsel and Plaintiff are responsible for preparing
3 and timely filing with the Court a Motion for Order Granting Final Approval and Entering
4 Judgment no later than sixteen (16) court days before the calendared Final Approval Hearing.
5 The Motion shall request Final Approval of the Settlement, including a request for approval
6 of the PAGA aspect of the settlement under Labor Code section 2699, subd. (l), and a
7 determination of the amounts payable for the Service Award, the Attorneys' Fees and
8 Attorneys' Expenses, the PAGA Payment, and the Administration Costs. Class Counsel may
9 file a separate motion requesting the award of Attorneys' Fees and Attorneys' Expenses in
10 accordance with the Agreement. Such separate motion shall be filed and heard concurrently
11 with the Motion for Order Granting Final Approval and Entering Judgment. The Parties agree
12 that the proposed judgment submitted to the Court in connection with the motion for final
13 approval shall include language entering judgment on Plaintiff's Operative Complaint in its
14 entirety, with prejudice, subject to Court approval. Plaintiff and Class Counsel shall provide
15 Defense Counsel with a draft of the Motion at least five (5) court days prior to the filing of
16 the Motion to give Defendant an opportunity to propose changes or additions to the Motion.
17 Class Counsel and Defense Counsel will expeditiously meet and confer in good faith to
18 resolve any disagreements concerning the Motion for Final Approval.

19 a. ***Declaration by Settlement Administrator.*** No later than seven (7) calendar
20 days after the Response Deadline, the Settlement Administrator shall provide to Class
21 Counsel and Defense Counsel a signed declaration suitable for filing in Court
22 attesting to its due diligence and compliance with all of its obligations under this
23 Agreement, including, but not limited to, the number of Notice Packets mailed and
24 re-mailed to Class Members, the number of undeliverable Notice Packets, the number
25 of timely Requests for Exclusion, the number of objections received (both valid and
26 invalid), the amount of the average Individual Class Payment and highest Individual
27 Class Payment, the Administration Costs, and any other information as the Parties

mutually agree or the Court orders the Settlement Administrator to provide. The Settlement Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

b. ***Final Approval Order and Judgment.*** Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

2. **Response to Objections.** Each Party retains the right to respond to any objection raised by a Settlement Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

3. **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement, the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Service Award, Attorneys' Fees payment, Attorney Expenses payment and/or Administration Costs shall not constitute a material modification to the Agreement.

4. **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

5. **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs

1 or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this
2 Agreement will be suspended until such time as the appeal is finally resolved and the
3 Judgment becomes final, except as to matters that do not affect the amount of the Net
4 Settlement Amount.

5 **6. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If
6 the Court vacates, reverses, or modifies the Judgment in a manner that requires a material
7 modification of this Agreement, this Agreement shall be null and void. The Parties shall
8 nevertheless expeditiously work together in good faith to address the appellate court's
9 concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any
10 additional Administration Costs reasonably incurred after remittitur. An appellate decision to
11 vacate, reverse, or modify the Court's award of the Service Award or any payments to Class
12 Counsel shall not constitute a material modification of the Judgment, as long as the Gross
13 Settlement Amount remains unchanged.

14 **7. Nullification of Settlement Agreement.** In the event that this Settlement Agreement
15 is not preliminarily or finally approved by the Court, fails to become effective, or is reversed,
16 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from
17 obtaining a complete resolution of the Released Claims, or if Defendant fails to fully fund
18 the Settlement Amount:

19 a. This Settlement Agreement shall be void *ab initio* and of no force or effect,
20 and shall not be admissible in any judicial, administrative or arbitral proceeding for
21 any purpose or with respect to any issue, substantive or procedural;

22 b. The conditional class certification (obtained for any purpose) shall be void *ab*
23 *initio* and of no force or effect, and shall not be admissible in any judicial,
24 administrative or arbitral proceeding for any purpose or with respect to any issue,
25 substantive or procedural; and
26

c. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

8. **Termination.** Defendant has the right in its sole and exclusive discretion to terminate and withdraw from the Settlement at any time prior to the date the Court enters final approval if 10.00% or more of Class Members timely and validly opt out of the Settlement or if the Court fails to approve material terms of the Settlement, including the scope of the release. Defendant must make such election within fifteen (15) business days of being notified by the Settlement Administrator of a 10.00% or greater opt-out rate or the Court's denial of the Settlement without prejudice. Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred as a result of Defendant exercising its termination rights under this Paragraph.

9. **Tax Liability.** The Parties and their counsel make no representations as to the tax treatment or legal effect of the payments called for in this Agreement, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Class Payments and Individual PAGA Payment and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of any Individual Class Payment and/or Individual PAGA Payment.

10. **Circular 230 Disclaimer.** Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that: (a) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within

the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (b) the acknowledging party (i) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (ii) has not entered into this Agreement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party, and (iv) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

I. SETTLEMENT FUNDING AND DISBURSEMENT

1. **Wiring Instructions.** As soon as practicable and no later than two (2) business days following the Effective Date, the Settlement Administrator shall provide Defense Counsel with complete wiring instructions for the GSA, including, without limitation, the name of the account, name of the bank, routing number, and bank account number or such other pertinent information Defendant requires in order to effectuate payment in accordance with the terms of the Agreement.

2. **Funding the GSA.** Defendant shall fund the GSA by transmitting the sum to the Settlement Administrator who shall establish a settlement fund that meets the requirements of a QSF under US Treasury Regulation section 468B-1 as specified in Paragraph G(2).

a. **Condition Precedent to Funding GSA.** Defendant shall transmit to the Settlement Administrator the GSA plus the employer-side payroll taxes within thirty (30) calendar days of Final Approval provided that Defendant receives: (i) fully completed and signed IRS W-9 Forms from both Plaintiff and Class Counsel; and (ii) complete wiring instructions from the Settlement Administrator as set forth in Paragraph I(1) herein.

1 b. ***No Further Obligations After Funding Settlement.*** Defendant shall be
2 deemed to have fully met its payment obligations under this Agreement upon transfer
3 and/or deposit of the GSA plus the employer-side payroll taxes and shall assume no
4 responsibility for the security or distribution of settlement funds following transfer
5 and/or deposit of the GSA. Defendant shall have no further obligations under this
6 Agreement after transferring the GSA to the Settlement Administrator and paying its
7 share of payroll taxes corresponding to the Individual Class Payments. Nor will the
8 payment of Individual Class Payments and Individual PAGA Payments obligate
9 Defendant to confer any additional benefits or make any additional payments to
10 Settlement Group Members (such as 401(k) contributions or bonuses).

11 3. **Payment to Settlement Group Members.** Within fifteen (15) calendar days after
12 Defendant funds the GSA, the Settlement Administrator will mail checks for (i) all Individual
13 Class Payments, and (ii) all Individual PAGA Payments. The Settlement Administrator will
14 send checks for Individual Class Payments to all Settlement Class Members (including those
15 for whom Class Notice was returned undelivered). The Settlement Administrator will send
16 checks for Individual PAGA Payments to all Aggrieved Employees including Non-
17 Participating Class Members who qualify as Aggrieved Employees (including those for
18 whom Class Notice was returned undelivered). All monies received by Settlement Class
19 Members under the Settlement which are attributable to wages shall constitute income to such
20 Settlement Class Members solely in the year in which such monies actually are received by
21 the Settlement Class Members. It is the intent of the Parties that Individual Settlement
22 Payments and individual shares of the PAGA Settlement provided for in this Settlement
23 agreement are the sole payments to be made by Defendant to Settlement Class Members
24 and/or PAGA Aggrieved Employees in connection with this Settlement Agreement, with the
25 exception of Plaintiff, and that the Settlement Class Members and/or PAGA Aggrieved
26 Employees are not entitled to any new or additional compensation or benefits as a result of
27 having received the Individual Settlement Payments and/or the Individual PAGA Payment.

1 a. ***First Class U.S. Mailing of Settlement Checks.*** The Settlement Administrator
2 will issue checks for the Individual Class Payments and Individual PAGA Payments,
3 and send them to the Settlement Group Members via First-Class U.S. Mail, postage
4 prepaid.

5 b. ***Address Search.*** Before mailing any checks, the Settlement Administrator
6 must update the recipients' mailing addresses using the National Change of Address
7 Database. The Settlement Administrator must conduct an address search for all other
8 Settlement Group Members whose checks are returned undelivered without USPS
9 forwarding address. Within seven (7) calendar days of receiving a returned check the
10 Settlement Administrator must re-mail checks to the USPS forwarding address
11 provided or to an address ascertained through the Address Search. The Settlement
12 Administrator need not take further steps to deliver checks to Settlement Group
13 Members whose re-mailed checks are returned as undelivered. The Settlement
14 Administrator shall promptly send a replacement check to any Settlement Group
15 Member whose original check was lost or misplaced, and which was requested by the
16 Settlement Group Member prior to the Void Date.

17 c. ***Void Date.*** Any checks issued to Settlement Group Members shall remain
18 valid and negotiable for one hundred and eighty (180) days from the date of their
19 issuance ("Void Date"). If a Settlement Group Member does not cash his or her
20 settlement check within 90 days, the Settlement Administrator will send a letter to
21 such persons, advising that the check will expire after the 180th day, and invite that
22 Settlement Group Member to request reissuance in the event the check was destroyed,
23 lost or misplaced.

24 d. ***Cy Pres Recipient.*** For any Settlement Group Member whose Individual
25 Class Payment check or Individual PAGA Payment check is uncashed and cancelled
26 after the Void Date, the Settlement Administrator shall transmit the funds represented
27 by such uncashed checks, plus any interest accrued thereon, to Legal Aid At Work

pursuant to California Code of Civil Procedure section 384, subd. (b) (“Cy Pres Recipient”). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

4. **Payment to Settlement Administrator.** Within fourteen (14) calendar days after Defendant funds the GSA, the Settlement Administrator will make the Administration Costs payment.

5. **Payment to LWDA.** Within fourteen (14) calendar days after Defendant funds the GSA, the Settlement Administrator will make the LWDA Payment.

6. **Payment to Plaintiff and Class Counsel.** Within twenty-one (21) calendar days after Defendant funds the GSA, the Settlement Administrator will wire or mail checks for (i) Attorneys’ Fees payment, (ii) Attorneys’ Expense payment and (iii) the Service Award. Disbursement of the Attorneys’ Fee payment, the Attorneys’ Expense payment and the Service Award shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. Any portion of the requested Service Award, Attorneys’ Fee payment or the Attorneys’ Expense payment that is not awarded to the Class Representative or Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for her Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on her Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award. The Service Award shall be in addition to Plaintiff’s Individual Settlement Payment as a Settlement Class Member. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Service Award. If the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding.

1 **J. ADDITIONAL PROVISIONS**

2 1. **Cooperation.** The Parties and their counsel will cooperate with each other and use
3 their best efforts to finalize the Settlement, and to use any other efforts that may be necessary
4 by order of the Court, or otherwise, to effectuate the Settlement.

5 2. **Interim Stay of Proceedings.** The Parties agree that, upon the execution of this
6 Agreement, all proceedings in the Action shall be stayed, except such proceedings necessary
7 to implement and complete the Settlement, pending the Final Approval/Settlement Fairness
8 Hearing to be conducted by the Court. The Parties further agree that upon the signing of this
9 Agreement, pursuant to Code of Civil Procedure section 583.330, to extend the date to bring
10 a case to trial under Code of Civil Procedure section 583.310 for the entire period of this
11 settlement process.

12 3. **No Solicitation.** The Parties agree that they and their respective counsel and
13 employees will not solicit any Class Member to opt out of or object to the Settlement, or
14 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
15 Counsel's ability to communicate with Class Members in accordance with Class Counsel's
16 ethical obligations owed to Class Members.

17 4. **No Public Comment.** The Parties and their counsel agree that they will not issue any
18 press releases, initiate any contact with the press, respond to any press inquiry, or have any
19 communication with the press about the fact, amount or terms of the Settlement Agreement.
20 Class Counsel further agrees not to use the Settlement Agreement or any of its terms for any
21 marketing or promotional purposes. Nothing herein will restrict Class Counsel from
22 including publicly available information regarding this settlement in future judicial
23 submissions regarding Class Counsel's qualifications and experience. Further, Class Counsel
24 will not include, reference or use the Settlement Agreement for any marketing or promotional
25 purposes, either before or after the Motion for Preliminary Approval is filed.
26
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1 5. **Amendment or Modification.** This Agreement may be amended or modified only
2 by an express written instrument signed by all Parties or their representatives, and approved
3 by the Court.

4 6. **Entire Agreement.** Upon execution by all Parties, this Agreement and any attached
5 exhibit shall constitute the entire Agreement between these Parties relating to the Settlement,
6 and no oral or written representations, warranties or inducements have been made to any
7 Party concerning this Agreement or its exhibits other than the representations, warranties and
8 covenants contained and memorialized in this Agreement and its exhibit.

9 7. **Cooperation in Drafting.** The Parties have each cooperated in the drafting and
10 preparation of this Agreement. This Agreement will not be construed against any Party on
11 the basis that the Party was the drafter or participated in the drafting.

12 8. **Headings.** The descriptive heading of any section or paragraph of this Agreement is
13 inserted for convenience of reference only and does not constitute a part of this Agreement.

14 9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant
15 and represent they are expressly authorized by the Parties whom they represent to negotiate
16 this Agreement and to take all appropriate Action required or permitted to be taken by such
17 Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents
18 required to effectuate the terms of this Agreement. The persons signing this Agreement on
19 behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement
20 on behalf of Defendant. Plaintiff represents and warrants that she is authorized to sign this
21 Agreement and that she has not assigned any claim, or part of a claim, covered by this
22 Settlement to a third-party.

23 10. **No Inducement.** The Parties acknowledge that they are entering into this Agreement
24 as a free and voluntary act without duress or undue pressure or influence of any kind or nature
25 whatsoever, and that neither Plaintiff nor Defendant have relied on any promises,
26 representations, or warranties regarding the subject matter hereof other than as set forth in
27 this Agreement.

11. **No Prior Assignments.** The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

12. **Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided for herein, each Party shall bear her or its own attorneys' fees, costs and expenses. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

13. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

14. **California Law Governs.** All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California, without regard to conflict of law principles.

15. **Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronic signature, or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them shall be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

16. **This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking into account all relevant factors, present and potential.

17. **Jurisdiction of the Court.** The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting,

1 implementing and enforcing the settlement and all orders and judgments entered in
2 connection with this Agreement.

3 18. **Invalidity of Any Provision.** Before declaring any provision of this Agreement
4 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
5 possible consistent with applicable precedents so as to define all provisions of this Agreement
6 valid and enforceable.

7 19. **No Unalleged Claims.** Plaintiff and Class Counsel represent that they do not
8 currently intend to pursue any claims against the Released Parties, including, but not limited
9 to, any and all claims relating to or arising from Plaintiff's employment with Defendant,
10 regardless of whether Class Counsel is currently aware of any facts or legal theories upon
11 which any claims or causes of action could be brought against Released Parties, including
12 those facts or legal theories alleged in the Operative Complaint in this Action. The Parties
13 further acknowledge, understand and agree that this representation is essential to the
14 Agreement and that this Agreement would not have been entered into were it not for this
15 representation.

16 20. **No Admissions by the Parties.** Plaintiff has claimed and continues to claim that the
17 Released Claims have merit and give rise to liability on the part of Defendant. Defendant
18 claims that the Released Claims have no merit and do not give rise to liability. This
19 Agreement is a compromise of disputed claims. Nothing contained in this Agreement and
20 no documents referred to and no action taken to carry out this Agreement may be construed
21 or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the
22 merits or lack thereof of the claims asserted.

23 ///

24 ///

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1 **K. EXECUTION BY PARTIES AND COUNSEL**

2 IN WITNESS WHEREOF, the Parties hereto execute this Agreement and have caused this
3 Agreement to be executed by their duly authorized representatives.

4
5 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

6 DATED: June 22, 2023 Emily Tolosa
7 Emily Tolosa

8 IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

9
10 DATED: _____
11 Kensington Senior Living, LLC
12
13 _____
14 Printed Name
15 _____
16 Title
17

18 IT IS SO AGREED AS TO FORM BY COUNSEL:

19 DATED: _____ JCL LAW FIRM, A.P.C.
20 By: _____
21 Attorneys for Plaintiff and the Settlement and PAGA
22 Class Members
23

24 DATED: _____ ZAKAY LAW GROUP, APLC
25 By: _____
26
27

1 **K. EXECUTION BY PARTIES AND COUNSEL**

2 IN WITNESS WHEREOF, the Parties hereto execute this Agreement and have caused this
3 Agreement to be executed by their duly authorized representatives.

4 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

5
6 DATED: _____
7 Emily Tolosa

8 IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

9
10 DATED: July 12, 2023
11 _____
12 Kensington Senior Living, LLC
13 _____
14 DAVID FAEDER
15 Printed Name
16 _____
17 MANAGER
18 Title

19 IT IS SO AGREED AS TO FORM BY COUNSEL:

20 DATED: _____ JCL LAW FIRM, A.P.C.
21 By: _____
22 Attorneys for Plaintiff and the Settlement and PAGA
23 Class Members

24 DATED: _____ ZAKAY LAW GROUP, APLC
25 By: _____
26

1 **K. EXECUTION BY PARTIES AND COUNSEL**

2 IN WITNESS WHEREOF, the Parties hereto execute this Agreement and have caused this
3 Agreement to be executed by their duly authorized representatives.

4 IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

5
6 DATED: _____

Emily Tolosa

7
8 IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

9
10 DATED: _____

Kensington Senior Living, LLC

11
12 _____
Printed Name

13
14 _____
Title

15
16
17 IT IS SO AGREED AS TO FORM BY COUNSEL:

18 DATED: July 7, 2023

JCL LAW FIRM, A.P.C.

19
20 By: 

21 Attorneys for Plaintiff and the Settlement and PAGA
22 Class Members

23
24 DATED: July 7, 2023

ZAKAY LAW GROUP, APLC

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26 By: 

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Attorneys for Plaintiff and the Settlement and PAGA
Class Members

DATED: July 14, 2023

HANSON BRIDGETT, LLP

By: 

Attorneys for Defendant

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

*(Tolosa v. Kensington Redwood City LLC, et al., San Mateo County Superior Court
Case No. 21-CIV-03030)*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Settlement Share is: \$<[REDACTED]>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	You may write to the Court about why you believe the settlement should not be approved or you may appear at the final hearing on [INSERT DATE] at [INSERT TIME] either in person or remotely. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Mateo (the “Court”) has been reached between Plaintiff Emily Tolosa (“Plaintiff”) and Defendant Kensington Senior Living, LLC, a Virginia Limited Liability Company (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All non-exempt employees who are or previously were employed by Kensington Senior Living, LLC who performed work in California during the Class Period.

The “Class Period” is the period of time running from June 2, 2017 to May 1, 2023.

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On June 2, 2021, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of San Mateo (“Action”). Plaintiff asserted claims that Defendant: (a) Violated California Business and Professions Code § 17200 *et seq.*; (b) Failed to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (c) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order ; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512, and the applicable IWC Wage Order; (f) Failed to provide accurate and complete itemized wage statements in violation of California Labor Code § 226; (g) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; and (h) Violations of the Private Attorney General Act at Labor Code Section 2698, *et seq.*

Defendant denies and disputes all claims asserted in the Action. Specifically, Defendant contended (and continues to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages and overtime that was due; that Defendant provided members of the class with all legally required meal breaks and rest breaks; that Defendant paid any members of the class all wages due them at the time of their terminations; that Defendant provided accurate, itemized wage statements to members of the class; that Defendant did not violate California Business and Professions Code section 17200 *et seq.*; and that Defendant is not liable for any of the penalties claimed or that could be claimed in the Action.

On February 1, 2022, the Parties participated in an all-day mediation with Tripper Ortman, Esq., an experienced mediator of wage and hour class actions. The mediation concluded without a settlement, but the Parties subsequently agreed to a Mediator’s proposal. The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an “all in” amount of Nine Hundred and Thirty Thousand Dollars (\$930,000) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Settlement Payments to Settlement Class Members, Class Counsel’s Attorneys’ Fees and Attorneys’ Expenses, Administration Costs, the LWDA Payment, PAGA Class Member Payments, and the Service Award to the Plaintiff.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Administration Costs. Payment to the Settlement Administrator, estimated not to exceed \$6,500.00 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Attorneys’ Fees and Attorneys’ Costs. Payment to Class Counsel of an award of Attorneys’ Fees of no more than 1/3 of the Gross Settlement Amount (currently \$310,000.00) and Attorneys’ Costs of not more than \$30,000 for all expenses incurred as documented in Class Counsel’s billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a

contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Service Award. A Service Award of up to Ten Thousand Dollars (\$10,000) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate her for services on behalf of the Class in initiating and prosecuting the Action, and for the risks she undertook.
- PAGA Settlement. A payment of \$50,000 relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$37,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA") ("LWDA Payment") and the remaining \$12,500 will be distributed to PAGA Employees as part of the Net PAGA Amount.
- Calculation of Individual Settlement Payments to Settlement Class Members. After all the above payments of the court-approved Class Counsel Attorneys' Fees and Attorneys' Costs, the Service Award, the LWDA Payment, and the Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Settlement Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendant's records, a member of the class worked at least one-day during any such workweek.
- Calculation of PAGA Class Member Payments to PAGA Class Members. The Net PAGA Amount shall be distributed to PAGA Class Members irrespective of whether they exclude themselves or opt-out. The Net PAGA Amount will be divided by the total number of pay periods worked by all PAGA Class Members during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective PAGA Class Member during the PAGA Period. "PAGA Class Member" means all non-exempt employees who are or previously were employed by Kensington Senior Living, LLC who performed work in California during the PAGA Period. The PAGA Period means the period between March 29, 2020 through May 1, 2023.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Settlement Share to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. 33.33% of each Individual Settlement Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. 33.33% of each Individual Settlement Payment is allocated to interest and 33.33% of each Individual Settlement Payment is allocated to penalties and other non-wage payments. No taxes will be withheld from the Interest Portion and the Penalty Portion, and each Settlement Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Class Member Payments paid to PAGA Class Members, and each PAGA Class Member will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Release by Settlement Class Members. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendant, Plaintiff and the Settlement Class Members shall release the claims alleged in the Operative Complaint, or which could have been alleged in the Operative Complaint based on the facts alleged, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Also excluded from this release are the PAGA Claims, which are separately released hereinbelow.

Release by the PAGA Class Members. Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendant, all PAGA Class Members shall release all PAGA Claims alleged in the Operative Complaint and Plaintiff's PAGA notice to the LWDA, or that could have been reasonably alleged in the Operative Complaint or Plaintiff's PAGA notice to the LWDA based on the facts alleged, which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers compensation and PAGA Claims outside the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << >> Workweeks worked during the Class Period (June 2, 2017 to May 1, 2023).

Based on this information, your estimated Individual Settlement Payment is << >>.

Defendant's records reflect that you have << >> PAGA Pay Periods worked during the PAGA Period (March 29, 2020 to May 1, 2023).

Based on this information, your estimated PAGA Class Member Payment is << >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: _____. (800) _____.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at www._____.com

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or “opt out.” **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or “opt out,” you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Net PAGA Amount.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is _____. The request for exclusion must state in substance: The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is ***Tolosa v. Kensington Redwood City LLC, et al., San Mateo County Superior Court, Case No. 21-CIV-03030***. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is Apex Class Action LLC, [insert mailing address].

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive , Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E-Mail: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com
[Website: www.zakaylaw.com](http://www.zakaylaw.com)

Counsel for Defendant:

Sandra L. Rappaport
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
Tel.: (415) 777-3200
Fax: (415) 541-9366
E-Mail: srappaport@hansonbridgett.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the San Mateo County

Superior Court, Dept. 3, located at 400 County Center, Redwood City, CA 94063, Courtroom 2B, before Judge Susan L. Greenberg. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-888-xxx-xxxx or write to ***Tolosa v. Kensington Redwood City LLC, et al., San Mateo County Superior Court, Case No. 21-CIV-03030***, Settlement Administrator, c/o

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed.
- In the event an Individual Settlement Payment and/or PAGA Class Member Payment has not been cashed within one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued thereon, shall be paid to Legal Aid At Work pursuant to California Code of Civil Procedure section 384.