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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

GEVORAK KEGEYAN, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

TOTAL EDUCATION SOLUTIONS, INC.,
a California corporation; and DOES
through 10, inclusive,

Defendants.

CASE NO.: 20STCV05460
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Maren Nelson, Dept. 17*

FIRST AMENDED JOINT STIPULATION
FOR CLASS ACTION AND PAGA
SETTLEMENT

Complaint Filed: February 11, 2020
Trial Date: None Set

1 **FIRST AMENDED JOINT STIPULATION AND SETTLEMENT AGREEMENT**

2 Subject to final approval by the Court, this Settlement Agreement is between GEVORK
3 KEGEYAN (“Named Plaintiff”) on his own behalf and on behalf of all members of the
4 Settlement Class, as defined below, on the one hand, and defendant TOTAL EDUCATION
5 SOLUTIONS, INC. (“Defendant”), on the other hand (collectively the “Parties”), in the lawsuit
6 entitled *Gevork Kegeyan v. Total Education Solutions, Inc.*, Los Angeles County Superior Court,
7 Case No. 20STCV05460 (“the Litigation”). This Stipulation of Settlement resolves all claims
8 that were asserted or could have been asserted against Defendant pertaining to the individual,
9 putative class, and representative claims set forth by Named Plaintiff in the Litigation.

10 **I. DEFINITIONS**

11 **A. Administrative Costs.** The term “Administrative Costs” means all
12 administrative costs of settlement, including cost of notice to the Settlement Class, claims
13 administration, and any fees and costs incurred or charged by the Settlement Administrator in
14 connection with the execution of its duties under this Stipulation of Settlement.

15 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
16 synonymously herein to mean this Stipulation of Settlement for purposes of Settlement.

17 **C. Class Counsel.** The term “Class Counsel” as used herein means Kane Moon,
18 Esq., H. Scott Leviant, Esq., and Ani Martirosian, Esq. of Moon & Yang, APC, and all of the
19 lawyers of that firm. The term “Class Counsel” shall be used synonymously with the term
20 “Plaintiff’s Counsel.”

21 **D. Class Period.** The term “Class Period” as used herein means the period from
22 February 11, 2016 through December 1, 2020.

23 **F. Court.** The term “Court” as used herein means the Superior Court of the State of
24 California for the County of Los Angeles.

25 **G. Counsel for Defendant.** The term “Counsel for Defendant” as used herein means
26 Grace Y. Horoupian, Esq. and Sean T. Kingston, Esq. of Fisher & Phillips LLP, and all of the
27 lawyers of that firm.
28

1 **H. Final.** The term “Final” means: (1) the date of final affirmation of the Final
2 Approval from any appeal, the expiration of the time for, or the denial of, a petition to review the
3 Final Approval, or if review is granted, the date of final affirmation of the Final Approval
4 following review pursuant to that grant; or (2) the date of final dismissal of any appeal from the
5 Final Approval or the final dismissal of any proceeding to review the Final Approval, provided
6 that the Final Approval is affirmed and/or not reversed in any part; or (3) if no putative class
7 members intervene but objections are filed, the expiration date of the time for the filing or
8 noticing of any appeal from the Court’s Final Approval of the Settlement, as determined under
9 Rule 8.104(a)(3) of the California Rules of Court or (4) if no putative class members intervene
10 and there are no objections, the date the Court enters the Final Approval Order and Final
11 Judgment.

12 **I. Final Approval Order.** The term “Final Approval Order” means the Final
13 Approval Order entered by the Court following the Final Fairness and Approval Hearing.

14 **J. Final Judgment.** The term “Final Judgment” means the Final Judgment entered
15 by the Court following the Final Fairness and Approval Hearing.

16 **K. Date of Final Approval.** The terms “Date of Final Approval” or “Final
17 Approval” as used herein mean the final formal judgment entered by the Court at the Final
18 Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

19 **L. Defendant.** The term “Defendant” as used herein means the named defendant in
20 the Litigation, defendant Total Education Solutions, Inc.

21 **M. Employer Taxes.** The term “Employer Taxes” as used herein means the
22 employer-funded share of taxes and contributions imposed on the wage portions of the Settlement
23 Amount under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act,
24 and/or any similar state taxes and contributions required of employers, such as for unemployment
25 insurance. The Employer Taxes will be paid separately by Defendant in addition to and at the
26 same time as the Settlement Amount.

27 **N. Litigation.** The term “Litigation” as used herein means the operative civil
28 complaint that was filed in California state court and any amendments thereto, which is currently

captioned *Gevork Kegeyan v. Total Education Solutions, Inc.*, Los Angeles County Superior Court, Case No. 20STCV05460.

O. Named Plaintiff. The term “Named Plaintiff” as used herein means the named plaintiff in this action, Gevork Kegeyan.

P. Net Settlement Amount. The term “Net Settlement Amount” as used herein means the Settlement Amount minus any award of attorneys’ fees and Litigation costs, Administrative Costs, enhancement to the Named Plaintiff, and the State of California’s portion of the penalties allocated pursuant to California’s Private Attorney General Act (“PAGA”) (“PAGA Settlement”), as provided in Sections XIV, VIII, XV, XVI, and XVII respectively.

Q. Net Settlement Payments. The term “Net Settlement Payment(s)” shall mean payments made to the Settlement Class as part of the Settlement, including wages, penalties and interest. The Class Members’ share of taxes for the wage portions of the Settlement Payment shall be taken from each Net Settlement Payment.

R. Notice of Proposed Class Action Settlement. “Notice of Proposed Class Action Settlement” or “Notice” shall mean the notice to be provided to all Settlement Class Members regarding the terms of this Settlement, substantially in the form attached hereto as **Exhibit A**. The Notice shall constitute class notice pursuant to California Rule of Court 3.769(f) and, once approved by the Court, shall be deemed compliant with California Rule of Court 3.766. Because the Settlement Class Members are required to provide services to students who speak English, the entire Settlement Class is known to have sufficient facility with English that a multi-language Notice is not required, and the Notice will issue exclusively in English.

S. Preliminary Approval Order. The term “Preliminary Approval Order” shall mean the order entered by the Court following the Preliminary Approval Hearing.

T. Settlement. The term “Settlement” as used herein means this Agreement to resolve the Litigation.

U. Settlement Administrator. The term “Settlement Administrator” as used herein means Phoenix Settlement Administrators, which will be responsible for the administration of the Settlement Payment, as defined below, and all related matters.

1 **V. Settlement Agreement.** The terms “Settlement Agreement” or “Agreement” are
2 used synonymously herein to mean this First Amended Stipulation of Settlement.

3 **W. Settlement Amount.** The terms “Settlement Amount” as used herein means a
4 fund in the sum of three hundred fifty thousand dollars and zero cents (\$350,000.00), which shall
5 be paid by Defendant, and from which all: Net Settlement Payments, Court approved attorneys’
6 fees and Litigation costs, Administrative Costs, enhancement to Named Plaintiff, and State of
7 California’s portion of the PAGA Settlement shall be paid, except as provided herein. The
8 Settlement Amount shall be non-reversionary.

9 **X. Settlement Class.** For settlement purposes only, the Parties agree to the
10 certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as: All
11 current and former non-exempt individuals employed by Defendants within the State of
12 California, who worked at more than one jobsite in a given day during the Class Period (for
13 purposes of the Settlement Class definition, jobsites exclude Defendant’s office and include field
14 work locations away from Defendant’s office locations, including educational facilities serviced
15 by Defendant and private residences).

16 **Y. PAGA Employees.** The term “PAGA Employee” refers to those members of the
17 Settlement Class employed at any time during the period of February 11, 2019 through December
18 1, 2020. The period of February 11, 2019 through December 1, 2020 is the “PAGA Period.”

19 **Z. Participating Settlement Class Members.** “Participating Settlement Class
20 Members” are those Settlement Class members that do not request exclusion from the Settlement
21 Class as set forth herein.

22 **II. BACKGROUND**

23 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and
24 all others similarly situated, that Defendant violated California state wage and hour laws and the
25 California *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of
26 Defendant’s California wage and hour policies and practices. For example, Named Plaintiff
27 alleges that Defendant failed to pay all owed wages, including minimum wages, regular wages,
28 overtime wages, and double-time wages; failed to provide overtime and double time pay and to

1 pay overtime and double time at the legally required rate(s); failed to authorize and permit legally
2 compliant rest periods; failed to provide legally compliant meal periods; failed to timely issue
3 accurate itemized wage statements; failed to maintain required employment records; failed to
4 reimburse reasonable and necessary business expenses; and engaged in unfair and unlawful
5 business practices. Named Plaintiff further alleges that the aforementioned resulted in the
6 underpayment of wages to employees upon termination and/or resignation. Finally, Named
7 Plaintiff alleges that Defendant's wage and hour practices establish liability for penalties
8 recoverable pursuant to California's PAGA.

9 **B.** Class Counsel conducted informal discovery and investigation that yielded
10 information and documentation concerning the claims set forth in the Litigation, such as
11 Defendant's policies and procedures regarding overtime, the payment of wages, the provision of
12 meal and rest periods, bonuses, issuance of wage statements, and the payment (or alleged non-
13 payment) of all wages at separation, as well as information regarding the number of putative class
14 members, workweeks, and the wage rates in effect.

15 **C.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
16 negotiations with Defendant concerning possible settlement of the claims asserted in the
17 Litigation. On September 14, 2020, the Parties participated in a full-day mediation before
18 mediator Todd A. Smith, Esq. that ultimately resulted in a tentative settlement of the Litigation,
19 subject to the approval of the Court, and finalization of a formal Stipulation for Settlement. The
20 Parties have since engaged in negotiations about the terms and conditions of the Settlement
21 Agreement. The Parties have now entered into a more detailed, formalized Settlement
22 Agreement for submission to the Court for approval.

23 **D.** Class Counsel has conducted an investigation of the law and facts relating to the
24 claims asserted in the Litigation and has concluded, taking into account the sharply contested
25 issues involved, the expense and time necessary to pursue the Litigation through trial and any
26 appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse
27 outcome, the uncertainties of complex litigation, and the substantial benefits to be received by
28 the Named Plaintiff and the members of the Settlement Class pursuant to this Stipulation for

1 Settlement, that a settlement with Defendant on the terms and conditions set forth herein is fair,
2 reasonable, adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his
3 own behalf and on behalf of the Settlement Class, has agreed to settle the Litigation on the terms
4 set forth herein.

5 **E.** Defendant has concluded that, because of the substantial expense of defending
6 against the Litigation, the length of time necessary to resolve the issues presented herein, the
7 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
8 interests to accept the terms of this Agreement. Defendant denies each of the allegations and
9 claims asserted against it in the Litigation. Defendant nevertheless desires to settle the Litigation
10 for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for
11 the purpose of putting to rest the controversies engendered by the Litigation.

12 **F.** This Agreement is intended to and does effectuate the full, final and complete
13 resolution of all allegations and claims that were asserted, or could have been asserted, in the
14 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II.A.

15 **III. JURISDICTION**

16 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
17 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
18 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
19 Final Approval of the Settlement, pursuant to *Code of Civil Procedure* Section 664.6 the Court
20 shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and
21 enforcing this Settlement consistent with the terms set forth herein.

22 **IV. STIPULATION OF CLASS CERTIFICATION**

23 The Parties stipulate to the certification of the Settlement Class for purposes of Settlement
24 only. This Stipulation is contingent upon the Preliminary and Final approval and certification of
25 the Settlement Class only for purposes of settlement. Should the Settlement not become final,
26 for whatever reason, the fact that the Parties were willing to stipulate provisionally to class
27 certification as part of the Settlement shall have no bearing on, and shall not be admissible in
28 connection with, the issue of whether a class should be certified in a non-settlement context in

1 the Litigation. Defendant expressly reserves the right to oppose class certification and / or to
2 proactively move to deny class certification should this Settlement be modified or reversed on
3 appeal or otherwise not become final.

4 **V. MOTION FOR PRELIMINARY APPROVAL**

5 Named Plaintiff will bring a motion before the Court for an order preliminarily approving
6 the Settlement including the Notice of Proposed Class Action Settlement, which is attached as
7 **Exhibit A**, and including conditional certification of the Settlement Class for settlement purposes
8 only and will request that the Court enter the Preliminary Approval Order. The date that the
9 Court grants Preliminary Approval of this Agreement will be the “Preliminary Approval Date.”
10 Class Counsel will prepare the Motion for Preliminary Approval.

11 **VI. STATEMENT OF NO ADMISSION**

12 A. Defendant expressly denies liability to Named Plaintiff and to the Settlement
13 Class upon any claim or cause of action. This Agreement does not constitute, and is not intended
14 to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the
15 allegations or claims made against them in the Litigation.

16 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
17 any statements, discussions or communications, nor any materials prepared, exchanged, issued
18 or used during the course of the negotiations leading to this Agreement or the Settlement, is
19 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
20 used or be admissible in any way in this case or any other judicial, arbitral, administrative,
21 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
22 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
23 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly
24 or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other
25 forum or proceeding, as purported evidence of any violation of any federal, state, or local law,
26 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
27 equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in
28 any proceeding before the Court that has as its purpose the interpretation, implementation, or

1 enforcement of this Agreement or any orders or judgments of the Court entered in connection
2 with the Settlement.

3 C. None of the documents produced or created by Named Plaintiff or the Settlement
4 Class in connection with the claims procedures or claims resolution procedures constitute, and
5 they are not intended to constitute, an admission by Defendant of any violation of any federal,
6 state, or local law, statute, ordinance, regulation, rule or executive order, any California Wage
7 Order, or any obligation or duty at law or in equity.

8 D. The Parties agree that class certification pursuant to California *Code of Civil*
9 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only.
10 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind
11 that any class should be certified or given collective treatment in the Litigation or in any other
12 action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this
13 Agreement will be admissible in any court or other tribunal regarding the propriety of class
14 certification or collective treatment. In the event that this Agreement is not approved by the
15 Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff
16 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
17 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
18 way any of its objections or defenses in the Litigation.

19 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

20 **A. Release as to All Settlement Class Members (excluding PAGA Claim).**

21 Following Final Approval, and once Defendant makes all of the installment payments on
22 the schedule set forth herein, Named Plaintiff and all members of the Settlement Class, except
23 those that make a valid and timely request to be excluded from the Settlement Class and
24 Settlement, waive, release, discharge, and promise never to assert in any forum the following
25 claims against Defendant, its past and present officers, directors, shareholders, unit holders,
26 managers, employees, agents, principals, heirs, representatives, accountants, auditors,
27 consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates,
28 related entities, parents, agents, assigns, insurers, re-insurers, and attorneys of any of them from

1 all claims, demands, rights, liabilities and causes of action that were pled in the operative First
2 Amended Complaint in the Litigation, or which could have been pled therein based on the factual
3 allegations therein, that arose during the Class Period with respect to the following claims: (a)
4 failure to pay all minimum wages and regular wages owed (including without limitation Labor
5 Code §§ 204, 1194, 1194.2, and 1197, et seq.); (b) failure to pay all overtime and double-time
6 wages owed (including without limitation Labor Code §§ 204, 510, 558, 1194, 1197.1, and 1198);
7 (c) failure to provide meal periods, or premium pay for non-compliant meal periods (including
8 without limitation Labor Code §§ 226.7, 512(a) & 1198 et seq.); (d) failure to authorize and
9 permit rest periods, or provide premium pay for non-complaint rest periods (including without
10 limitation Labor Code §§ 226.7, 512, & 1198 et seq.); (e) failure to provide accurate, itemized
11 wage statements (including without limitation Labor Code §§ 226 and 226.3); (f) failure to timely
12 pay wages upon separation of employment (including without limitation Labor Code §§ 201,
13 202, and 203 et seq.); (g) failure to maintain employment records (including without limitation
14 Labor Code §§ 226, 432, 1198.5); (h) failure to reimburse all reasonable and necessary business
15 expenses (including without limitation Labor Code §§ 2802 et seq.; (i) all damages, penalties,
16 interest and other amounts recoverable under said causes of action under California and federal
17 law, to the extent permissible, including but not limited to the California Labor Code as to the
18 facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the complaint;
19 and (j) all claims for unfair business practices that could have been premised on the facts, claims,
20 causes of action or legal theories described above (including without limitation Business &
21 Professions Code §§ 17200, *et seq.*).

22 **B. Release as to All PAGA Employees (PAGA Claim Only)**

23 Following Final Approval, and once Defendant makes all of the installment payments on
24 the schedule set forth herein, Named Plaintiff and all PAGA Employees waive, release,
25 discharge, and promise never to assert in any forum the following claims against Defendant, its
26 past and present officers, directors, shareholders, unit holders, managers, employees, agents,
27 principals, heirs, representatives, accountants, auditors, consultants, and its respective successors
28 and predecessors in interest, subsidiaries, affiliates, related entities, parents, agents, assigns,

1 insurers, re-insurers, and attorneys of any of them: all claims under PAGA that were stated in
2 Plaintiff's correspondence entitled Notice of Labor Code Violations and PAGA Penalties send
3 to the to the California Labor Workforce Development Agency ("LWDA") on or about February
4 10, 2020 (the "LWDA Notice Letter"), whether stated expressly or implicitly, based upon the
5 allegations contained in the LWDA Notice Letter. The LWDA Notice Letter is attached hereto
6 as **Exhibit B**. PAGA Employees cannot exclude themselves from the release of the PAGA
7 claims.

8 **C. When Releases Become Final**

9 In the event that Defendant fails to make all of the installment payments on the schedule
10 set forth herein, no Release will be conferred by the Settlement Class Members. Once Defendant
11 makes all of the installment payments (the Initial, Second and Final Installments) on the schedule
12 set forth herein, the Release shall become final.

13 **D. General Release by Named Plaintiff Only.**

14 In addition to the release made in Section VII.A., once Defendant makes all of the
15 installment payments on the schedule set forth herein,, Named Plaintiff individually makes the
16 additional following general release of all claims, known or unknown.

17 Named Plaintiff individually releases Defendant, its past and present officers, directors,
18 shareholders, unit holders, managers, employees, agents, principals, heirs, representatives,
19 accountants, auditors, consultants, and its respective successors and predecessors in interest,
20 subsidiaries, affiliates, related entities, parents, agents, assigns, insurers, re-insurers, and
21 attorneys of any of them, from all claims, demands, rights, liabilities and causes of action of
22 every nature and description whatsoever, known or unknown, asserted or that might have been
23 asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation
24 arising out of, relating to, or in connection with any act or omission by or on the part of any
25 Defendant. (The release set forth in this Paragraph B shall be referred to hereinafter as the
26 "General Release.")

27 With respect to the General Release, Named Plaintiff stipulates and agrees that, once
28 Defendant makes all of the installment payments on the schedule set forth herein, Named Plaintiff

1 shall be deemed to have, expressly waived and relinquished, to the fullest extent permitted by
2 law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other
3 similar provision under federal or state law, which provides:

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

10 Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other
11 than or different from the facts now believed to be true, the release of claims contained herein
12 shall be effective as to all unknown claims.

13 **E. Publicity.**

14 Named Plaintiff, Class Counsel and Counsel for Defendant agree that they have not and
15 will not discuss, disclose, or communicate the Litigation, other than pursuant to the terms of
16 Section VII.C., below, of this Agreement. Named Plaintiff, Class Counsel and Counsel for
17 Defendant also agree that they have not and will not publish the Litigation, outside of the public
18 nature of the Litigation as a matter of public record. Named Plaintiff, in response to inquiries,
19 will state that that “the Litigation was resolved.” Class Counsel shall not report the Litigation in
20 any medium or in any publication, shall not post or report anything regarding the Litigation on
21 their websites, and shall not contact the press, reporters or general media regarding the Litigation.
22 As used herein, “press, reporters, or general media” shall refer to and include newspapers,
23 periodicals, magazines, online publications, social media platforms, and television and radio
24 stations and programs, and any representative of the foregoing. Upon receipt of an inquiry from
25 the press, reporters, or general media, Class Counsel and Counsel for Defendant shall respond
26 “we have no comment.” However, Named Plaintiff’s attorneys are authorized to make a limited
27 disclosure to the Court and the California Labor Workforce Development Agency (“LWDA”)
28 for the purposes of obtaining the approval of the settlement. This disclosure is limited to court
filings and filings to the LWDA, and neither Named Plaintiff nor his counsel or representatives
are permitted to disseminate or publish, distribute or discuss the information provided to the

1 Court in those filings outside the filings themselves and any hearing held on those filings, unless
2 ordered otherwise by the Court or the LWDA. Nothing herein shall prevent Class Counsel from
3 communicating with Named Plaintiff and members of the Settlement Class, the LWDA, or the
4 Settlement Administrator regarding the terms of this Stipulation and/or the Settlement. However,
5 for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other
6 actions, Class Counsel may disclose the name of the Parties in this action, the venue/case number
7 of this action, and the fact this action settled on a class-wide basis (but not any other settlement
8 details) for such purposes.

9 **VIII. SETTLEMENT ADMINISTRATOR**

10 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix
11 Settlement Administrators as the Settlement Administrator to administer the Settlement, which
12 includes but is not limited to distributing the Notice of Proposed Class Action Settlement
13 (including obtaining updated class member addresses, performing a National Change of Address
14 search, and/or skip-tracing), establishing a toll-free number to respond to inquiries regarding the
15 Settlement, determining the validity of the opt-outs, keeping track of opt-outs and objections, and
16 calculating all amounts to be paid from the Settlement, including the amount of all payroll tax
17 deductions to be withheld or backup withholdings, deducting appropriate tax withholdings and
18 paying them to the appropriate government entity, mailing checks for individual settlement
19 payments for attorneys' fees and litigation costs, enhancements to the Named Plaintiff, and
20 penalties under PAGA, providing Class Counsel and Counsel for Defendant with weekly updates
21 on the status of Settlement administration (including numbers and percentages of mailed Notices,
22 returned Notices, re-mailed Notices, undeliverable Notices, opt-outs, and objections), providing
23 declarations and/or reports as required for court filings, and for any other tasks that the Parties
24 may mutually agree or the Court orders the Claims Administrator to perform. The Parties agree
25 that the charges and expenses of the Settlement Administrator should not exceed \$20,000.00,
26 absent extraordinary circumstances, and will be paid from the Settlement Amount. Any charges
27 and expenses of the Settlement Administrator greater than the estimated \$20,000.00 will be paid
28 from the Settlement Amount. The Parties have secured a low bid for settlement administration

1 in the amount of \$10,000 from Phoenix Settlement Administrators, which the Parties have
2 accepted as a reasonable bid for the proposed services. If the actual Settlement Administrator
3 fees are less than the Parties' estimation, the difference between the actual and estimated
4 Settlement Administrator fees will flow through to the Net Settlement Amount.

5 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

6 **A. Notice.**

7 Named Plaintiff and Defendant, through their respective attorneys, have jointly prepared
8 a Notice of Class Action and Proposed Settlement (the "Notice") that will be provided to the
9 members of the Settlement Class through the following procedure:

10 As soon as practicable following Preliminary Approval of the Settlement, but no later
11 than fourteen (14) days after the Court's Preliminary Approval order, Defendant will provide,
12 confidentially, to the Settlement Administrator, the following information about each Settlement
13 Class member: (1) name; (2) last known home address; (3) number of workweeks during the
14 Class Period based on dates of employment; and (4) social security number (collectively the
15 "Class Data"). The Settlement Administrator shall thereafter be permitted to provide all counsel
16 with an anonymized list of workweeks worked by each Settlement Class Members, along with
17 preliminary calculations of estimated payments to those Settlement Class Members that will be
18 reported in the Notice so that all counsel can review the payments calculations for irregularities.

19 Separately, Defendant shall provide Class Counsel with a listing of names and number of
20 workweeks during the Class Period, for each Class Member ("Class List"), which Class Counsel
21 must treat as highly confidential, designated as "Attorneys Eyes Only" as if so marked under a
22 Protective Order restricting access to the Class List to attorneys employed by Class Counsel only,
23 and use for no purpose other than satisfying fiduciary duties to the Settlement Class. Once Final
24 Approval is granted, and the Settlement Administrator has issued all payments under the terms
25 of Settlement, Class Counsel shall permanently delete the Class List, destroy any paper copies,
26 and confirm the secure destruction of the Class List to Defendant's Counsel.

27 The Settlement Administrator shall run all the addresses provided through the United
28 States Postal Service NCOA database (which provides updated addresses for any individual who

1 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
2 address) to obtain current address information. The Settlement Administrator shall mail the
3 Notice to the members of the Settlement Class via first-class regular U.S. Mail using the most
4 current mailing address information available within fourteen (14) calendar days after the receipt
5 of the Class List from Defendant.

6 The Notice shall provide the members of the Settlement Class with a sixty (60) day notice
7 of all applicable dates and deadlines. The Notice will also include information regarding the
8 nature of the Litigation; a summary of the terms of the Settlement; the definition of the Settlement
9 Class member; a statement that the Court has preliminarily approved the Settlement; the
10 procedure and time period for objecting to the Settlement; the date and location of the Final
11 Approval hearing; information regarding the opt-out procedure; Defendant's calculation of the
12 number of workweeks during the Class Period; and the estimated individual settlement payment
13 the Class member will receive if they do not validly opt-out of the Settlement.

14 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
15 submit the applicable and available information, including name, social security number, and
16 original mailing address, to a company that specializes in address skip tracing in an attempt to
17 locate a more current address. If the Settlement Administrator is successful in locating a new
18 address, it will re-mail the Notice to the Settlement Class member. Further, any Notices returned
19 with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline
20 date, shall be sent to the forwarding address affixed thereto. For any Notice that is re-mailed to
21 a new address, the deadline for that Settlement Class Member to object in writing, request
22 exclusion, or dispute the reported workweeks worked during the Class Period shall be the later
23 of 60 days after the initial mailing of the Notice or 14 days after the re-mailing of the Notice. If
24 the Settlement Administrator is unsuccessful in locating a new address, it will re-mail the Notice
25 to the original address it had for the Settlement Class member.

26 No later than twenty-five (25) days prior to the Final Approval Hearing, the Settlement
27 Administrator shall provide Counsel for Defendant and Class Counsel with a declaration attesting
28 to the completion of the Notice process, including the number of attempts to obtain valid mailing

addresses for and re-sending of any returned Notices, as well as the number of valid opt-outs and deficiencies which the Settlement Administrator received.

B. Objections.

In order for any Settlement Class member to object to this Settlement, or any term of it, the person making the objection must not submit a request for exclusion (i.e., must not opt out). If any Settlement Class member wishes to object in writing, the Settlement Class Member should, by no later than sixty (60) days after the Notice of Proposed Class Action Settlement was initially mailed to the Settlement Class members (or as extended due to re-mailing of the Notice), mail to the Settlement Administrator a written statement of the grounds of objection, signed by the objecting Settlement Class member or his or her attorney, along with all supporting papers. All such written objections and written notices of intention to appear should be signed and contain the Settlement Class member's name and address and the address of counsel, if any. The written objection should clearly explain why the settlement class member objects to the Settlement and state whether the Settlement Class member (or someone on his or her behalf) intends to appear at the Final Approval Hearing. The Settlement Administrator shall immediately upon receipt transmit to the Parties' counsel copies of all objections and supporting papers. The Parties then shall file the objections and all supporting papers with the Court as soon as practicable but no later than the date upon which Plaintiff files a Motion for Final Approval. Regardless of whether a written objection is submitted, a Settlement Class member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel. If a Settlement Class member objects to this Settlement, the Settlement Class member will remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement Class member will be bound by the terms of the Settlement and Final Approval in the same way and to the same extent as a settlement class member who does not object. The date of mailing of the Notice of Proposed Class Action Settlement to the objecting Settlement Class member shall be conclusively determined according to the records of the Settlement

1 Administrator. The Court retains final authority with respect to the consideration and
2 admissibility of any Settlement Class member objections. Due to procedures in place as a result
3 of the COVID-19 virus, appearances at the Final Approval hearing may be telephonic or
4 restricted by special Court Orders, and the Notice will advise Settlement Class Members of that
5 possibility.

6 **C. Opportunity to be Excluded.**

7 In order for any Settlement Class member to validly exclude himself or herself from the
8 Settlement (i.e., to validly opt out), a written request for exclusion (“Request to be Excluded”) must be signed by the Settlement Class member or his or her authorized representative and must
9 be sent to the Settlement Administrator, postmarked by no later than sixty (60) days after the date
10 the Settlement Administrator initially mails the Notice of Proposed Class Action Settlement to
11 the Settlement Class members (or as otherwise extended by any re-mailed Notice). The Notice
12 of Proposed Class Action Settlement shall contain instructions on how to opt out. Specifically,
13 the Notice of Proposed Class Action Settlement shall specify that the Settlement Class Member’s
14 Request to be Excluded must include the Class Member’s name and address, be signed by the
15 Settlement Class Member, and state words to the effect of the following: “I hereby request to be
16 excluded from the Class Action Settlement in *Kegeyan v. Total Education Solutions, Inc.*”

17
18 The date of the initial mailing of the Notice, and the date the signed request to be excluded
19 was postmarked, shall be conclusively determined according to the records of the Settlement
20 Administrator. Any Settlement Class member who timely and validly submits a request to be
21 excluded from the Settlement Class and this Settlement will not be entitled to any individual
22 settlement payment, will not be bound by the terms and conditions of this Settlement, and will
23 not have any right to object, appeal, or comment thereon. Any member of the Settlement Class
24 who does not timely file and mail a request to be excluded from the Settlement Class will be
25 deemed included in the Settlement Class in accordance with this Settlement. Named Plaintiff
26 waives any right to be excluded from the Settlement Class.

27 PAGA Employees cannot exclude themselves from the settlement of PAGA Claims, even
28 if they request exclusion from the Settlement Class.

1 **D. Non-Cooperation.**

2 The Parties and their counsel agree not to encourage members of the Settlement Class to
3 opt out of this settlement, or to object to the Settlement, directly or indirectly, through any means.
4 If a Settlement Class member contacts Class Counsel, Class Counsel may objectively discuss the
5 terms of the Settlement and the Settlement Class member's options.

6 **X. CLAIMS PROCEDURE**

7 Settlement Class members shall not be required to submit a claim form to participate in
8 the Settlement; this Settlement is not a "claims-made" settlement. Named Plaintiff and
9 Defendant have agreed upon the following procedure to resolve all claims during the Class
10 Period.

11 In the Notice of Proposed Class Action Settlement, each member of the Settlement Class
12 will receive a calculation of the total number of workweeks as a Settlement Class member in
13 California during the Class Period (hereinafter "Eligible Workweeks"), as well as the Settlement
14 Class Member's estimated Net Settlement Payment. Periods of non-membership in the Class
15 (i.e., in an exempt position or outside California or outside the Class Period) are excluded from
16 the Eligible Workweeks calculation. The Eligible Workweeks data will also be used to calculate
17 payments to PAGA Employees, and that amount will be included in the estimated Net Settlement
18 Payment to those Settlement Class members.

19 If the member of the Settlement Class disputes the number of Eligible Workweeks set
20 forth in the Notice, such person must follow the directions in the Notice, including preparing a
21 statement setting forth the number of Eligible Workweeks that such person believes in good faith
22 is correct and stating that the member of the Settlement Class authorizes the Settlement
23 Administrator to review the Settlement Class member's personnel file to determine such
24 information and attaching any relevant documentation in support thereof. The member of the
25 Settlement Class must mail the signed and completed statement no later than sixty (60) days after
26 the date of the mailing of the Notice (or as otherwise extended by any re-mailed Notice), or the
27 number of Eligible Workweeks set forth in the Notice will govern the Net Settlement Payments
28 to the members of the Settlement Class and PAGA Employees.

1 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation
2 with Class Counsel and Counsel for Defendant, will review the pertinent payroll records showing
3 the dates the Settlement Class member was employed and the pertinent leave(s) taken, which
4 records Defendant agrees to make available to the Settlement Administrator.

5 After consulting with Class Counsel and Counsel for Defendant, the Settlement
6 Administrator shall compute the number of Eligible Workweeks to be used in computing the
7 Settlement Class member's pro rata share of the Net Settlement Amount (less \$7,500 to be
8 distributed exclusively to PAGA Employees): a Participating Settlement Class member's pro
9 rata share of the Net Settlement Amount (less \$7,500 to be distributed to PAGA Employees) =
10 the Net Settlement Amount (less \$7,500) $\times$ the Participating Settlement Class member's Eligible
11 Workweeks $\div$ sum of all Eligible Workweeks worked by all Participating Settlement Class
12 Members. The Settlement Administrator shall also compute each PAGA Employee's pro rata
13 share of the \$7,500 allocated to PAGA Employees: a PAGA Employee's pro rata share of the
14 \$7,500 = \$7,500 $\times$ the PAGA Employee's Eligible Workweeks worked during the PAGA Period
15 only $\div$ sum of all Eligible Workweeks worked by all PAGA Employees during the PAGA Period
16 only. In the event there is a disparity between the dates a Settlement Class member claims he or
17 she worked during the Class Period, including during the PAGA Period, and the dates indicated
18 by Defendant's records, Defendant's records will control unless inconsistent with paycheck
19 stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the
20 paycheck stub(s) will control. The Settlement Administrator's decision as to the total number of
21 Eligible Workweeks shall be final and non-appealable. The Settlement Administrator shall send
22 written notice of the decision on any such claim to the Settlement Class member, to Class
23 Counsel, and Counsel for Defendant within ten (10) calendar days of receipt of the dispute.

24 **XI. FINAL APPROVAL HEARING AND ENTRY OF FINAL APPROVAL ORDER**
25 **AND FINAL JUDGMENT**

26 Upon expiration of the Objection/Exclusion Deadlines, on the date set forth in the
27 Preliminary Approval Order, a Final Approval Hearing shall be conducted in order to: (1) review
28 this Settlement and determine whether the Court should give it final approval; (2) consider any

1 objections timely submitted before the Objection Deadline; and (3) consider Class Counsel's
2 request for attorney's fees and costs, the Named Plaintiff's Enhancement Award, and the
3 requested Administrative Costs.

4 At the Final Approval Hearing, Named Plaintiff, through Class Counsel, shall ask the
5 Court to grant final approval to this Settlement and shall submit a Final Approval Order and a
6 Final Judgment, to the Court for its approval. The Parties shall take all reasonable efforts to
7 secure entry of the Final Approval Order and Final Judgment.

8 **XII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

9 **A. Distribution Formula.**

10 Members of the Settlement Class not opting out will receive a lump sum payment as good
11 and valuable consideration for the waiver and release of claims set forth in Section VII.A., above,
12 in an amount determined by the Settlement Administrator in accordance with the provisions of
13 this Agreement. The lump sum payment to each member of the Settlement Class not excluding
14 him/herself will be determined by first calculating the total amount owed to each Participating
15 Settlement Class Member and each PAGA Employee. A Participating Settlement Class
16 member's pro rata share of the Net Settlement Amount (less \$7,500 to be distributed to PAGA
17 Employees) = the Net Settlement Amount (less \$7,500) × the Participating Settlement Class
18 member's Eligible Workweeks ÷ sum of all Eligible Workweeks worked by all Participating
19 Settlement Class Members. A PAGA Employee's pro rata share of the \$7,500 = \$7,500 × the
20 PAGA Employee's Eligible Workweeks worked during the PAGA Period only ÷ sum of all
21 Eligible Workweeks worked by all PAGA Employees during the PAGA Period only. Applicable
22 withholdings of taxes will be deducted from payments to Participating Settlement Class
23 Members, based on the Parties stipulated allocation of the Net Settlement Amount as provided
24 for in Section XVI, below.

25 **B. Funding of Settlement.**

26 Defendant shall fully fund the settlement as follows, assuming final approval:

- 27 • December 14, 2021: \$116,500.00 ("Initial Settlement Installment")
- January 14, 2022: \$116,500.00 ("Second Settlement Installment")
- 28 • February 14, 2022: \$117,000.00 ("Final Settlement Installment")

1 To effectuate settlement funding, Defendant will deposit the Net Settlement Payments, Court
2 approved enhancement to Named Plaintiff, Court approved attorney's fees and Litigation costs,
3 Claims Administration Costs and the PAGA Settlement into an interest-bearing trust account for
4 the benefit of Settlement Class members and Class Counsel, through the Settlement
5 Administrator. At no time prior to the date on which the Settlement becomes Final shall
6 Defendant be required to escrow any portion of the Settlement Amount.

7 **C. Time for Distribution.**

8 Within fifteen (15) calendar days following receipt of the Final Settlement Installment of
9 Settlement funds from Defendant, the Settlement Administrator shall mail the Net Settlement
10 Payments, State of California portion of the PAGA Settlement, Class Counsel Attorney's Fees
11 and Litigation Costs, and Court approved enhancement to Named Plaintiff. Also, within the
12 same 15-day period, the Settlement Administrator shall deduct its Administrative Costs from the
13 Settlement Amount. Settlement checks shall remain negotiable for one hundred and eighty (180)
14 days from the date of mailing. If settlement check remains uncashed after one 180 days from
15 issuance, the Settlement Administrator shall transfer the value of the uncashed checks, plus any
16 interest that has accrued thereon, to the State Controller's Office-Uncollected Funds, in the name
17 of the Settlement Class member. The Settlement Administrator shall void any tax documents
18 issued to Settlement Class members who did not cash their checks within 180 days of issuance.
19 In such event, such Settlement Class member shall nevertheless remain bound by the Settlement.
20 Prior to the Final Approval hearing, the Parties shall provide the Court the total amount that will
21 be payable to the Settlement Class member. The Parties also shall request that the Court set a
22 date for the Parties to report to the Court the total amount that was actually paid to Settlement
23 Class members.

24 **XIII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

25 The amounts paid under this Agreement do not represent a modification of any previously
26 credited hours of service under any employee benefit plan, policy or bonus program sponsored
27 by Defendant. Such amounts will not form the basis for additional contributions to, benefits
28 under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by

Defendant's, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language of their benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.

XIV. ATTORNEYS' FEES AND LITIGATION COSTS

A. Class Counsel Attorneys' Fees and Litigation Costs.

Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of 33¹/₃% of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of fifteen thousand dollars (\$15,000.00), which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Settlement. Any attorneys' fees or Litigation costs awarded to Class Counsel by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement and securing Final Approval (including any appeals therein).

There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation costs and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory whatsoever. Assuming Final Approval, within fifteen (15) days of Defendant's Final Settlement Installment, the Settlement Administrator shall disburse payment from the Settlement Amount for the amount of attorneys' fees and Litigation

costs approved by the Court to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then the unapproved portion or portions shall flow to the Net Settlement Amount.

XV. ENHANCEMENT TO NAMED PLAINTIFF

Defendant shall not oppose an application by Named Plaintiff, and Named Plaintiff shall not seek or receive an amount in excess of ten seven thousand five hundred dollars and zero cents (\$7,500.00), for participation in and assistance with the Litigation. This amount is separate and distinct from Named Plaintiff's individual Net Settlement Payment amount. Any enhancement awarded to Named Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than \$7,500.00 to Named Plaintiff, any unapproved portion or portions shall flow to the Net Settlement Amount.

XVI. TAXATION AND ALLOCATION

The amount paid to each Participating Settlement Class member shall be net of the participating Settlement Class member's share of all federal, state and local taxes and required withholdings, including without limitation, FICA, Medicare tax, FUTA, and state unemployment taxes. The Employer Taxes for Defendant's share of taxes for the wage portions of the Settlement Payment shall be paid by Defendant separately and in addition to Defendant's payment of the Settlement Amount. The Parties agree that all employment taxes and other legally required withholdings will be withheld from payments to the members of the Settlement Class and Named Plaintiff based on the Parties stipulated allocation of the Net Settlement Amount as provided for in this Section. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented.

Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations. For withholding tax characterization purposes and payment of taxes, the Net Settlement Amount (less \$7,500 for PAGA Employees) shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"): (1) 20% as wages; (2) 40% as

penalties; and (3) 40% as interest. The \$7,500 allocated to PAGA Employees shall be deemed and allocated as 100% penalties.

Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS STIPULATION OF SETTLEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS STIPULATION OF SETTLEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY” ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS STIPULATION OF SETTLEMENT, 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); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS STIPULATION OF SETTLEMENT, (B) HAS NOT ENTERED INTO THIS STIPULATION OF SETTLEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) 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 (3) 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 STIPULATION OF SETTLEMENT.

XVII. PRIVATE ATTORNEY GENERAL ACT ALLOCATION

In order to implement the terms of this Settlement and to settle claims alleged under the Private Attorneys’ General Act (“PAGA”), California *Labor Code* section 2698 *et seq.*, the

Parties agree to allocate thirty thousand dollars and zero cents (\$30,000.00) of the Settlement Amount as the PAGA Settlement from which \$22,500.00 will be paid to the LWDA and \$7,500.00 to PAGA Employees by having that 25% amount flow through to the Net Settlement, to be paid exclusively to the Settlement Class members who are also PAGA Employees. Within fifteen (15) calendar days following the payment of Final Settlement Installment, the Settlement Administrator shall disburse the \$22,500.00 to the LWDA.

XVIII. COURT APPROVAL

This Agreement and the Settlement is contingent upon Final Approval by the Court. Named Plaintiff and Defendant agree to take all steps as may be reasonably necessary to secure Preliminary Approval and Final Approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining Court approval, and, if necessary, appellate approval, of the Settlement in all respects. Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of this Stipulation of Settlement or assist or encourage any person or entity to file any such objection.

XIX. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending Final Approval of the Settlement by the Court.

B. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Named Plaintiff and Defendant. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State

1 of California for the County of Los Angeles, and Named Plaintiff and Defendant hereby consent
2 to the personal jurisdiction of the Court over them solely in connection therewith. Named
3 Plaintiff, on his own behalf and on behalf of the Settlement Class, and Defendant participated in
4 the negotiation and drafting of this Agreement and had available to them the advice and
5 assistance of independent counsel. As such, neither Named Plaintiff nor Defendant may claim
6 that any ambiguity in this Agreement should be construed against the other. The terms and
7 conditions of this Agreement constitute the exclusive and final understanding and expression of
8 all agreements between Named Plaintiff and Defendant with respect to the Settlement of the
9 Litigation. The Agreement may be modified only by a writing signed by the original signatories
10 and approved by the Court.

11 **C. Further Cooperation.**

12 Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to
13 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
14 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
15 possible.

16 **D. Confidentiality of Documents.**

17 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
18 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,
19 written discovery, declarations and other information obtained in the lawsuit, unless necessary
20 for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

21 **E. Counterparts.**

22 The Agreement may be executed in one or more actual or non-original counterparts, all
23 of which will be considered one and the same instrument and all of which will be considered
24 duplicate originals. Additionally, signatures delivered via facsimile or electronic transmission
25 shall have the same force, validity and effect as the originals thereof.

26 **F. Authority.**

27 Each individual signing below warrants that he or she has the authority to execute this
28 Agreement on behalf of the party for whom or which that individual signs.

1 **G. No Third Party Beneficiaries.**

2 Named Plaintiff, members of the Settlement Class, and Defendant are direct beneficiaries
3 of this Agreement, and there are no third party beneficiaries.

4 **H. Force Majeure.**

5 The failure of any party to perform any of its obligations hereunder shall not subject such
6 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
7 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
8 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
9 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
10 terrorist acts, acts or failures to act of any third parties, or any other similar or different
11 circumstances or causes beyond the reasonable control of such party.

12 **I. Deadlines Falling on Weekends or Holidays.**

13 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
14 or legal holiday, that deadline shall be continued until the following business day.

15 **J. Severability.**

16 In the event that any one or more of the provisions contained in this Agreement shall for
17 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
18 unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel,
19 on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such
20 invalid, illegal, or unenforceable provision had never been included in this Agreement. Before
21 declaring any provision of this Agreement invalid, the Court shall first attempt to construe the
22 provisions as valid and enforceable to the fullest extent possible consistent with applicable law.

23 **K. Right to Terminate Settlement**

24 If ten percent (10%) or more members of the Settlement Class members exercise their
25 rights to exclude themselves and opt out of the Settlement, Defendant may, in its sole discretion,
26 unilaterally withdraw from and terminate the Settlement no later than five (5) days prior to the
27 date of the Final Approval Hearing. In the event of Defendant's withdrawal, no party may use
28 the fact that the Parties agreed to the Resolution for any reason. Moreover, in the event that

Defendant elects to terminate this Settlement, Defendant shall pay all of the Administrative Costs incurred by the Settlement Administrator up to that point.

L. Escalator Clause. The settlement is made based on approximately 710 Class Members covering an estimated 31,750 workweeks. The Gross Settlement Amount shall increase proportionally with added workweeks if the number is more than 10% of the estimate stated herein. For example, if the difference between the estimated workweeks and the actual number of workweeks for all class members as of December 1, 2020 is 11%, the Gross Settlement Amount shall be increased by 1%. The Gross Settlement shall not be reduced as a result of the total workweeks falling below Defendant's estimate of 31,750.

M. Successors and Assigns

This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

N. Non-Approval of Settlement

In the event that this Settlement is not granted final approval, and any attempts to revise the Settlement as directed by the Court are not successful in obtaining final approval, this Agreement shall be deemed void *ab initio* and the Parties shall be returned to their respective positions as though this Agreement was never executed, including with respect to any releases of claims. Under these circumstances the Parties shall split equally the Administrative Costs incurred to that point.

O. Jurisdiction of the Court and Venue

The Parties agree that this Settlement Agreement shall be enforceable by the Court pursuant to California *Code of Civil Procedure* Section 664.6. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement 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, implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith. Any adjudicated dispute regarding the interpretation or validity of or otherwise arising out of this Settlement Agreement, or relating to

the Action or the Released Claims, shall be subject to the exclusive jurisdiction of the California state courts in and for the County of Los Angeles, and Named Plaintiff, Class Members, and Defendant agree to submit to the personal and exclusive jurisdiction and venue of these courts.

Dated: 2/1/2021, 2021

NAMED PLAINTIFF:

DocuSigned by:

Gevork Kegeyan

7342A2127DB04C0...
GEVORK KEGEYAN

Dated: February 1, 2021

DEFENDANT:

H. S. Leviant

TOTAL EDUCATION SOLUTIONS, INC.

By:

APPROVED AS TO FORM:

Dated: _____, 2021

MOON & YANG, APC

By:

KANE MOON

H. SCOTT LEVIANT

ANI MARTIROSIAN

Attorneys for Plaintiff GEVORK KEGEYAN

DATE: _____, 2021

FISHER & PHILLIPS LLP

By:

GRACE Y. HOROUPIAN

SEAN T. KINGSTON

Attorneys for Defendant

TOTAL EDUCATION SOLUTIONS, INC.

1 the Action or the Released Claims, shall be subject to the exclusive jurisdiction of the California
2 state courts in and for the County of Los Angeles, and Named Plaintiff, Class Members, and
3 Defendant agree to submit to the personal and exclusive jurisdiction and venue of these courts.
4

5 Dated: _____, 2021

NAMED PLAINTIFF:

6 _____
7 GEVEORK KEGEYAN
8
9

10 Dated: Jan 28, 2021

DEFENDANT:

11 
12 TOTAL EDUCATION SOLUTIONS, INC.
13 By:

14 **APPROVED AS TO FORM:**

15 Dated: _____, 2021

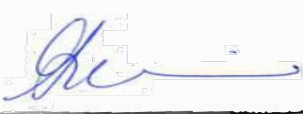
MOON & YANG, APC

16
17 By: _____

KANE MOON
H. SCOTT LEVIANT
ANI MARTIROSIAN
Attorneys for Plaintiff GEVORK KEGEYAN
18
19

20 DATE: January 29, 2021

FISHER & PHILLIPS LLP

21
22 By:  _____

GRACE Y. HOROUPIAN
SEAN T. KINGSTON
Attorneys for Defendant
TOTAL EDUCATION SOLUTIONS, INC.
23
24
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Exhibit “A”

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Kegeyan v. Total Education Solutions, Inc.
Los Angeles Superior Court Case No. 20STCV05460

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE A NON-EXEMPT EMPLOYEE OF TOTAL EDUCATION SOLUTIONS, INC. (“DEFENDANT”) IN CALIFORNIA AS AT ANY TIME BETWEEN FEBRUARY 11, 2016 AND DECEMBER 1, 2020 (THE “CLASS PERIOD”), AND YOU WORKED AT MORE THAN ONE JOBSITE IN A GIVEN DAY DURING THE CLASS PERIOD, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Kegeyan v. Total Education Solutions, Inc.*, Los Angeles Superior Court Case No. 20STCV05460 (the “Action”). The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Maren Nelson on <<FA DATE>>, at <<FA TIME>>, in Department SSC-17 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. <i>Written</i> objections must be submitted by <<RESPONSE DEADLINE>>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Settlement Class”):

All current and former non-exempt individuals employed by Defendants within the State of California, who worked at more than one jobsite (jobsites exclude Defendant’s offices and include field work locations away from Defendant’s office locations, including educational facilities serviced by Defendant and private residences) in a given day during the Class Period. (the “Class Period” is February 11, 2016 through December 1, 2020).

According to Defendant's records, you are a member of the Settlement Class ("Settlement Class Member").

"PAGA Employees" are those Settlement Class Members employed at any time during the PAGA Period (the "PAGA Period" is February 11, 2019 through December 1, 2020).

What is this case about?

In the Action, Plaintiff Gevork Kegeyan ("Plaintiff") alleges on behalf of herself and the Class that Defendant: (1) failed to pay minimum and straight time wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages to terminated employees; (6) failed to furnish accurate itemized wage statements; (7) failed to reimburse business expenses; (8) violated California's Unfair Competition Law, California Business and Professions Code § 17200 et seq.; and (9) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiff seeks unpaid wages, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff's claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
H. Scott Leviant
Ani Martirosian
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
scott.leviant@moonyanglaw.com
ani.martirosian@moonyanglaw.com

Defendant's Counsel

Grace Y. Horoupian
Sean T. Kingston
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$350,000 (the "Settlement Amount") for: (a) individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payments to Plaintiff (\$7,500 to be requested); (c) the Court-approved attorneys' fees and costs to Class Counsel (\$116,666.66 in fees and up to \$15,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency ("LWDA") for alleged PAGA penalties (\$22,500 of a total of \$30,000 allocated to PAGA penalties); and (e) payment to the Settlement Administrator for settlement administration services (estimated to be \$10,000, and not to exceed \$20,000).

Individual Settlement Payments. After deduction from the Settlement Amount for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make an individual Settlement Payment to each Settlement Class Member who does not request to be excluded from the Settlement ("Participating Settlement Class Members") and to each PAGA Employee, regardless of whether they request exclusion from the Settlement. From the Net Settlement Amount, \$7,500 will be set aside for payments

to PAGA Employees. The remainder of the Net Settlement Amount will be distributed to Participating Settlement Class Members. If you will receive payments both as a Participating Settlement Class Member and as a PAGA Employee, the Settlement Administrator will combine the payments, less applicable taxes and required withholdings, into a single check.

The Net Settlement Amount shall be divided among all Participating Settlement Class Members and PAGA Employees on a pro rata basis based upon the total number of workweeks worked by each respective Settlement Class Member as a non-exempt hourly employee in the State of California during the Class Period and PAGA Period, where applicable. Your estimated individual Settlement Payment is listed below.

Your estimated minimum settlement payment is <<**Estimated Payment**>> and your covered Work Weeks worked during the relevant period between February 11, 2016 and December 1, 2020 are <<**Work Weeks**>>. To the extent you dispute the number of Work Weeks, you must make your dispute (“Work Week Dispute”) in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<**RESPONSE DEADLINE**>> (the “Response Deadline”) to:

Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863

Your Work Week Dispute must be in writing and contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of Work Weeks you contend is correct; and (c) any evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Work Week Disputes, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated individual Settlement Amount is incorrect because your Work Weeks (the number of total weeks you worked within the Class Period only) are wrong, the deadline to dispute the workweeks reported for you is <<**RESPONSE DEADLINE**>>.

For tax reporting purposes, the payments to Participating Settlement Class Members will be allocated 20% as wages, 40% as penalties and 40% as interest. The payments to PAGA Employees will be allocated as 100% penalties. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Participating Settlement Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for individual Settlement Payments paid to Participating Settlement Class Members and PAGA Employees shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed by a Participating Settlement Class Member and/or PAGA Employee within that time. Any individual Settlement Payment that is not cashed by a Participating Settlement Class Member and/or PAGA Employee within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office for Unclaimed Property in the name of each check recipient who failed to cash their check prior to the void date. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

If approved, the Settlement in this matter will be funded in three installment payments by Defendant as follows:

- December 14, 2021: \$116,500.00 (“Initial Settlement Installment”)
- January 14, 2022: \$116,500.00 (“Second Settlement Installment”)
- February 14, 2022: \$117,000.00 (“Final Settlement Installment”)

Payments to Participating Settlement Class Members will issue only AFTER the payment by Defendant of the Final Settlement Installment. **PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.**

NOTE: If you are a PAGA Employee, you will receive your share of the \$7,500 allocated to PAGA Employees even if you request exclusion from the Settlement Class.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Participating Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$116,666.67 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of \$7,500 for Plaintiff for his efforts in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will be \$10,000, but could be a little higher if unexpected administration issues arise. A payment in the amount of \$22,500.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$30,000 set aside for payment under PAGA. The remaining \$7,500 set aside for the PAGA claim settlement will be included in the Net Settlement Amount and distributed to the PAGA Employees.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Settlement Class and each Settlement Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims (the "Released Claim") as follows:

Following Final Approval, and once Defendant makes all of the installment payments on the schedule set forth herein, Named Plaintiff and all members of the Settlement Class, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, waive, release, discharge, and promise never to assert in any forum the following claims against Defendant, its past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, related entities, parents, agents, assigns, insurers, re-insurers, and attorneys of any of them from all claims, demands, rights, liabilities and causes of action that were pled in the operative First Amended Complaint in the Litigation, or which could have been pled therein based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to pay all minimum wages and regular wages owed (including without limitation Labor Code §§ 204, 1194, 1194.2, and 1197, et seq.); (b) failure to pay all overtime and double-time wages owed (including without limitation Labor Code §§ 204, 510, 558, 1194, 1197.1, and 1198); (c) failure to provide meal periods, or premium pay for non-compliant meal periods (including without limitation Labor Code §§ 226.7, 512(a) & 1198 et seq.); (d) failure to authorize and permit rest periods, or provide premium pay for non-complaint rest periods (including without limitation Labor Code §§ 226.7, 512, & 1198 et seq.); (e) failure to provide accurate, itemized wage statements (including without limitation Labor Code §§ 226 and 226.3); (f) failure to timely pay wages upon separation of employment (including without limitation Labor Code §§ 201, 202, and 203 et seq.); (g) failure to maintain employment records (including without limitation Labor Code §§ 226, 432, 1198.5); (h) failure to reimburse all reasonable and necessary business expenses (including without limitation Labor Code §§ 2802 et seq.); (i) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the complaint; and, (j) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (including without limitation Business & Professions Code §§ 17200, et seq.).

Following Final Approval, and once Defendant makes all of the installment payments on the schedule set forth herein, Named Plaintiff and all PAGA Employees waive, release, discharge, and promise never to assert in any forum the following claims against Defendant, its past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, related entities, parents, agents, assigns, insurers, re-insurers, and attorneys of any of them: all claims under California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. that were stated in Plaintiff's correspondence entitled Notice of Labor Code Violations and PAGA Penalties sent to the to the California Labor Workforce Development Agency ("LWDA") on or about February 10, 2020 (the "LWDA Notice Letter"), whether stated expressly or implicitly, based upon the allegations contained in the LWDA Notice Letter. No Settlement Class Member can request exclusion from the settlement of the PAGA Claim. If you are a Settlement Class Member, and this

Settlement is approved, you will release the PAGA Claim even if you request to be excluded from the Settlement Class.

In the event that Defendant fails to make all of the installment payments (the Initial, Second and Final Installments) on the schedule set forth herein, no Release will be conferred by the Settlement Class Members. Once Defendant makes all of the installment payments (the Initial, Second and Final Installments) on the schedule set forth herein, the Release shall become final.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Settlement Class and receive an individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Settlement Class and be eligible to receive an individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Settlement Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object to it or express any concerns. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection (“written objection”) to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. If you submit a written objection, it should contain sufficient information to confirm the your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be postmarked on or before <<RESPONSE DEADLINE>> and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Settlement Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**

Regardless of the form, an objection, alone will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Settlement Class and Receive No Money from the Settlement. If you do not want to be part of the Settlement, you must submit a written request to be excluded from the Settlement to the Settlement Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. In order to be valid, your written request to be excluded from the Settlement must be signed and include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with a statement like the following:

“I hereby request to be excluded from the Class Action Settlement in *Kegeyan v. Total Education Solutions, Inc.*”

Your written request to be excluded from the Settlement must then be signed and postmarked on or before <<RESPONSE DEADLINE>>. If you do not submit a written request to be excluded from the Settlement on time

(as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a Participating Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement. You will not be able to complain to the Court about any aspect of the Settlement.

NOTE: PAGA Employees cannot exclude themselves from the release of the PAGA claims.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on <<FA DATE>>, at <<FA TIME>>, in Department SSC-6 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. Because of healthcare guidance and Orders of the Los Angeles Superior Court related to COVID-19, the hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, visit <https://www.lacourt.org/lacc/> for instructions on how to do so. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<[website](#)>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the First Amended Joint Stipulation of Class Action Settlement attached to the Supplemental Declaration of H. Scott Leviant in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation for Class Action and PAGA Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Los Angeles Superior Court, located at 111 N. Hill Street, Los Angeles, California 90012. Because of the Los Angeles Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: www.lacourt.org/casesummary/ui/index.aspx?casetype=civil NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “B”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
kane.moon@moonyanglaw.com

February 10, 2020

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Total Education Solutions, Inc.
625 Fair Oaks Avenue, Suite 300
South Pasadena, CA 91030

Notice of Labor Code Violations and PAGA Penalties

Re: ***Gevork Kegeyan v. Total Education Solutions, Inc.***

To Whom It May Concern:

Please be advised that my office has been retained by Gevork Kegeyan ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Total Education Solutions, Inc. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of himself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a ESS provider from approximately December 2014 to November 2019, primarily in Los Angeles County. Defendant classified Plaintiff as a non-exempt employee for purposes of overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 3 days per workweek, and over 20 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendant maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees for all hours worked (including minimum wages, straight time wages and overtime wages). Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendant required Plaintiff and the Aggrieved Employees to work "off-the-clock", uncompensated. For example, Plaintiff and the Aggrieved Employees were required to drive from one location to another throughout the workday. However, Plaintiff and the Aggrieved Employees were only compensated through a payment of reimbursed mileage, as opposed to being paid an hourly wage for this drive-time. Further, Defendant required that Plaintiff and the Aggrieved Employees prepare written reports as part of their job duties, for which Plaintiff and

the Aggrieved Employees spent approximately 30 minutes each week off-the-clock, and uncompensated. Finally, approximately once per month, Plaintiff and the Aggrieved Employees were required to drive to Defendants' office in order to turn in reports, all uncompensated. Some of this unpaid work also should have been paid at the overtime rate. In failing to record the time Plaintiff and the Aggrieved Employees spent at work, Defendants also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked. As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement. For example, as part of Plaintiff and the Aggrieved Employees' job duties, they were required to use their personal cellular telephones. Although Defendants reimbursed a portion of Plaintiff's cellular phone usage, Defendants did not fully reimburse said

phone usage. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be

aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;

3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

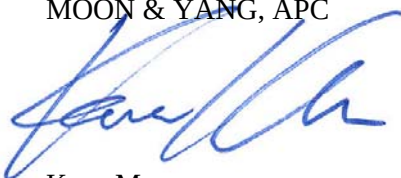
Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law