COHELAN KHOURY & SINGER
Michael D. Singer (SBN 115301)
msinger@ckslaw.com
Jeff Geraci (SBN 151519)
jgeraci@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Telephone: (619) 595-3001
Facsimile: (619) 595-3000

LEBE LAW, APLC
Jonathan M. Lebe (SBN 284605)
jon@lebelaw.com
Zachary Gershman (SBN 328004)
zachary@lebelaw.com
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046

Attorneys for Plaintiff Julio Ochoa, individually and on behalf of all others similarly situated

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JULIO OCHOA, individually and on behalf of all others similarly situated, Plaintiff, v. SPEECH AND LANGUAGE DEVELOPMENT CENTER, INC.; and DOES 1 through 25, inclusive Defendants.	Case No. 30-2020-01143577-CU-OE-CXC ASSIGNED FOR ALL PURPOSES TO: The Honorable James J. Di Cesare Department C16 **CLASS ACTION** **DECLARATION OF JEFF GERACI IN SUPPORT OF MOTION FOR ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: June 10, 2022 Time: 9:30 a.m. Dept: C16 Judge: Honorable James J. Di Cesare Reservation: 73725796 Complaint filed: June 18, 2020 Trial date: Not set

I, Jeff Geraci, declare as follows:

1. I am a Partner with the law firm of Cohelan Khoury & Singer, co-counsel of record for Plaintiff Julio Ochoa. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This Declaration is based on my personal knowledge and if called to testify I could and would competently testify to the matters contained in this Declaration.

2. I am a 1990 University of San Diego School of Law graduate, admitted to the California State Bar in 1990. I am admitted to all California state and federal courts. I have provided counseling and representation in all areas of employment law, including wrongful termination, discrimination, harassment, and wage and hour law since 1992. I founded Law Office of Jeff Geraci in 1999 and managed that firm through 2009, when I joined Cohelan Khoury & Singer. I have conducted six jury trials of employment law cases to verdict as sole trial counsel, prevailing in four. My practice has focused solely on litigation of class and representative actions, particularly wage and hour class actions, for the past 12 years. I have drafted amicus letters on a range of issues, primarily for the California Employment Lawyers Association (CELA), supporting publication or depublication of Court of Appeal decisions. I have been primarily responsible for dozens of wage and hour class actions, from drafting the complaint, through discovery, dispositive motions, settlement, and settlement approval.

3. I have acted as lead appellate counsel in a dozen matters, including the published employment cases, *McAlindin v. County of San Diego* (1999) 192 F.3d 1226 (9th Cir. 1999) [reversing summary judgment in a disability discrimination case]; *Vaquero v. Ashley Furniture Indus.*, 824 F.3d 1150 (9th Cir. 2016) [affirming class certification for sales associates].

4. In 1981, Timothy D. Cohelan and Isam C. Khoury formed Cohelan & Khoury, a Partnership of Professional Law Corporations, and within a few years began to focus on class actions. In 2009, Cohelan & Khoury became Cohelan Khoury & Singer. Our firm represents plaintiffs in complex, class and representative action litigation, including wage and hour, labor and employment, antitrust, consumer protection, construction defect and other public interest type class and representative actions.

5. Managing Partner Michael D. Singer was admitted as a fellow to the College of Labor and Employment Attorneys in 2020, and named to the Daily Journal 2012, 2013, and 2018 list of Top California Labor and Employment Attorneys. He, along with Isam Khoury, a founding Partner of the firm, and Partner Diana M. Khoury, have also been selected by their peers based on ethics, experience and reputation as Super Lawyers in Civil Litigation by the Southern California Super Lawyers Magazine for the years 2012 through the present.

6. Cohelan Khoury & Singer has been certified by the State Bar of California to provide the Mandatory Continuing Legal Education activity entitled "Litigating California Class Actions" and has conducted MCLE certified seminars on this topic. Senior Partner, Timothy D. Cohelan, is the author of Cohelan on California Class Actions (1997-2021, updated annually), part of Thomson Reuters Expert Series updated annually. Michael D. Singer is a contributing author on the CEB publication California Wage and Hour Law: Compliance and Litigation (2010-2021 updated annually), in which he wrote the opening chapter overview on California Wage and Hour laws, including the public policy underpinnings for those laws, and the Private Attorneys General Act (PAGA) Claim chapter. He is also a contributing author to the CEB Practitioner (2020), including guidelines for oral argument and forms for PAGA litigation. Mr. Singer has served as a columnist for the California State Bar, Litigation Section on wage and hour litigation and has contributed articles on wage and hour and class action issues through the years to numerous California publications. Prior to COVID, he typically lectured several times per year for continuing education courses on wage and hour and class action issues at events in San Diego, Orange County, Los Angeles, and San Francisco. For over twelve years, Mr. Singer has served as wage and hour amicus co-chair and liaison for the California Employment Lawyers Association, drafting, reviewing, and coordinating amicus filings on wage and hour issues in the California Supreme Court and Courts of Appeal. He has been engaged in the practice of labor and employment law since 2000, handling well over 300 wage and hour class and PAGA actions and several individual labor cases. He has litigated several types of employment actions, including complex ERISA employee welfare benefit plan cases, as well as wage and hour class actions before Federal and State Courts in California. In 2014, Mr. Singer,

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605 C Street, Suite 200
San Diego, CA 92101

along with Partner J. Jason Hill, tried a wage and hour class action involving claims for illegally deducted wages and unreimbursed expenses. *Dilts v Penske Logistics LLC, Inc*. Mr. Singer successfully appealed the trial court ruling in *Dilts* finding state laws preempted by the FAAAA for truck drivers.

7. Mr. Singer has participated in over 50 appellate cases and argued writs and appeals before several California District Courts of Appeal, arguing for plaintiffs on rehearing in *Brinker International Inc. v. Superior Court* before the Fourth District Court of Appeal, as well as federal appeals in the Second, Third, and Ninth Circuit Courts of Appeals. In addition, Mr. Singer has drafted numerous appellate briefs as the appellant, respondent, or amicus curiae in employment class and individual actions. As co-Class Counsel in *Brinker Restaurant Corp. v. Superior Court* [formerly reported at (2008)165 Cal.App.4th 25], Mr. Singer argued before the Fourth District Court of Appeal in May 2008 on transfer from the California Supreme Court, and co-authored the successful Petition for Review. My firm has successfully tried class cases, obtained appellate reversals of class certification denials (*Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), and certified multiple wage and hour classes.

8. As a part of our overall firm philosophy lawyers perform community service and pro bono work. Firm volunteer work includes service through the Legal Aid at Work, San Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and Consumer Attorneys of San Diego. During law school, I interned for the ACLU and Equal Rights Assistance assisting on impact litigation class action lawsuits. I am a past recipient of the Wiley W. Manuel Award for Pro Bono Service. Mr. Singer has served on the Legal Aid at Work Board of Directors since 2011. Mr. Cohelan served as the Chair of the San Diego Volunteer Lawyers Program from 2015-2018, and currently sits on the Board as past Chair. He completed 24 years of volunteer judicial service as a Judge Pro Tem of the San Diego Superior Court. Since admission to the California Bar, Partner Diana M. Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys of San Diego, Consumer Attorneys of California, and American Association for Justice serving and chairing various committees through the years for these organizations. For six years from 2010 through 2015, Ms. Khoury

served on the Board of Directors for Consumer Attorneys of San Diego. Since 2013, Ms. Khoury actively serves on the Board of Directors for the San Diego County Bar Foundation, the 501(c)(3) charitable arm of the San Diego County Bar Association providing access to justice to the underserved and impoverished in the San Diego County region. Our firm's recent pro bono victories include a settlement which prohibits the City of San Diego from targeting homeless people for illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The *Spencer* settlement had the effect of increasing the number of available shelter beds in San Diego.

9. Cohelan Khoury & Singer has been certified Class Counsel in the following contested proceedings: *Aguilar v. Atlantic Richfield, et al.*, San Diego County Superior Court Case No. 00700810; *Andino v. Kaiser Foundation Hospitals*, Alameda County Superior Court Case No. RG11580548; *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court Case No. BC500675; *BANK OF AMERICA WAGE AND HOUR EMPLOYMENT PRACTICES LITIGATION*, United States District Court, District of Kansas MDL Case No. 2138 (FLSA Condition Certification); *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California Case No. 13CV1901; *Dilts, et al. v. Penske Logistics, L.L.C., et al.*, United States District Court, Southern District of California Case No. 08CV0318; *Englert, et al. v. AT&T Wireless Services, Inc., et al.*, Circuit Court of the Second Circuit, State of Hawaii Case No. 02-1-0074; *Evans v. Washington Mutual Bank*, Orange County Superior Court Case No. 02CC15415; *Filion v. Ethan Allen Retail Inc.*, United States District Court, Southern District of California Case No. 05CV2340; *Gerard v. Les Schwab Tire Centers of California, Inc.*, Sacramento County Superior Court Case No. 2007-30000003; *Grana, et al. v. PICO Enterprises, Inc. dba Phyle Inventory Control Specialist and PICS* L.A.S.C. Case No. BC472891; *Gutierrez v. Save Mart Supermarkets* San Mateo Superior Case No. CIV530955; *Wilcox v Albertsons*, San Diego County Superior Court Case No. GIC833922; *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County Register*, Orange County Superior Court Case No. 03CC08756; *Graham, et al. v. Overland Solutions, Inc.*, United States District Court, Southern District of California Case No.

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10CV0672 (FLSA Conditional Certification); *Hicks v. Kaufman and Broad Home Corp.*, Los Angeles County Superior Court Case No. B198414; *Hohnbaum, et al. v. Brinker Restaurant Corporation, et al.*, San Diego County Superior Court Case No. GIC834348; *KEMP, et al. v. CSEA, et al.*, Circuit Court of the First Circuit, State of Hawaii Case No. 98-3815-08; *LIBERTY MUTUAL OVERTIME CASES*, Los Angeles County Superior Court Case No. JCCP 4234; *Mitchell, et al. v. Acosta, Inc., dba Acosta Sales and Marketing Company*, United States District Court, Central District of California Case No.11CV07196 (FLSA Conditional Certification); *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411; *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; *Schneider, et al. v. Catholic Healthcare West*, San Francisco County Superior Court Case No. CGC-10-506243; *Salucci v. Amada Senior Care, Inc.*, Orange County Superior Court Case No. 37-2015-00778081; *Smith v. California Pizza Kitchen*, San Diego County Superior Court Case No. 37-2008-00083992; STEROID HORMONE PRODUCT CASES, Los Angeles County Superior Court Case No. JCCP 4363; *Stevenson Aibangbee v. Victoria Apartments, et al.*, Los Angeles County Superior Court Case No. BC299498; *Swift v. Liebert Corp.*, Orange County Superior Court Case No. 00CC04588; *Sylvia, et al. v. Wells Fargo Home Mortgage, Inc.*, Orange County Superior Court Case No. 03CC05747; *Vaquero v. Ashley Furniture Industries, Inc., et al.*, United States District Court, Central District of California Case No. 12CV8590; *Vaquero v. Stoneledge Furniture LLC*, Los Angeles County Superior Court Case No. BC522676; *Vazquez v. Kraft Heinz Foods Company*, Unites States District Court, Southern District of California Case No. 16-CV-02749; *Watson v. Raytheon Company*, United States District Court, Southern District of California Case No. 1OCV0634; and *Weigele v. FedEx Ground Package System, Inc.*, United States District Court, Southern District of California Case No. 06CV1330, among others, as well as being appointed Class Counsel in connection with well over 200 class action settlements.

10. As Class and PAGA Representative Counsel, Cohelan Khoury & Singer has actively commenced, prosecuted and concluded numerous state and federal class and representative actions. Since 2016, Cohelan Khoury & Singer has played a central role in the

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resolution of over 200 such cases, including the following, which have received court approval: (a) *Arellano, et al. v. Container Connection of Southern California, Inc.*, Los Angeles County Superior Court, Case No. BC500675, Hon. Anne I. Jones; (b) *Castro v. Home Depot U.S.A., Inc.*, Los Angeles County Superior Court, Case No. BC577885, Hon. Elihu M. Berle; (c) *Czuchaj v. Conair Corporation*, United States District Court, Southern District of California, Case No. 13-CV-1901 BEN, Hon. Roger T. Benitez; (d) *Gardiner v. TSYS*, United States District Court, Central District of California, Case No. 18-cv-00415, Hon. David O. Carter; (e) *Grana v. PICO Enterprises, Inc.*, Los Angeles County Superior Court, Case No. BC472891, Hon. Stephanie M. Bowick; (f) *Gutierrez v. Save Mart Supermarkets*, San Mateo County Superior Court, Case No. CIV530955, Hon. Marie S. Weiner; (g) *Hernandez v. Workforce Enterprises WFE, Inc.*, Los Angeles County Superior Court Case No. BC590913, Hon. Elihu M. Berle; (h) *Hicks v. Poway Academy of Hair Design, Inc.*, San Diego County Superior Court, Case No. 2014-00026517, Hon. Ronald L. Styn; (i) *Hubbard v. Caliber Home Loans, Inc.*, Orange County Superior Court, Case No. 2018-01017838; (j) *Klein v. Loomis Armored US, LLC*, San Bernardino County Superior Court, Case No. CIVDS1704547, Hon. David Cohn; (k) *Laureano v. The Art of Shaving*, Los Angeles County Superior Court, Case No. BC550093, Hon. Amy D. Hogue; (l) *Lopez, et al. v. Management & Training Corporation, et al.*, United States District Court, Southern District of California, Case No. 17-CV-010624 JM, Hon. Jeffrey T. Miller; (m) *Magdaleno v. Shelly Automotive, LLC*, Orange County Superior Court Case No. 2013-0043958, Hon. Kim. G. Dunning; (n) *McGrath, et al. v. Wyndham Resort Development Corporation, et al.*, United States District Court, Southern District of California, Case. No. 15-CV-1631 JM, Hon. Jeffrey T. Miller; (o) *Mena v. Wolfgang Puck Catering*, Los Angeles County Superior Court Case No. BC582743, Hon. John Shepard Wiley, Jr.; (p) *Morales v. The Los Angeles Country Club*, Los Angeles County Superior Court, Case No. BC566493, Hon. William F. Highberger; (q) *Nijmeh v. Bon Appetit Management Company, Inc.*, Santa Clara County Superior Court, Case No. 16CV294127, Hon. Thomas E. Kuhnle; (r) *Plascencia v. Aramark Services, Inc.*, Santa Clara County Superior Court, Case No. 2015-1-CV-288310, Hon. Brian C. Walsh; (s) *Plimpton v. Gordon Trucking, Inc.*, San Bernardino County Superior Court,

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Case No. CIV-DS-1511918, Hon. Donald Alvarez; (t) *Raya v. Amazon*, USDC, Northern District of California, Case No. 15-CV-02005 MMC, Hon. Maxine M. Chesney; (u) *Rivas v. ESA Management*, USDC, Central District of California, Case No. 14-CV-5767, Hon. Dale S. Fischer; (v) *Rodriguez v Healthcare Partner Medical Group, Inc.*, Los Angeles County Superior Court, Case No. BC541313, Hon. Kenneth Freeman; (w) *Ryan v. Dignity Health*, Sacramento County Superior Court Case No. 2013-00147371, Honorable Alan G. Perkins; (x) *Santana v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 37-2014-00022411, Hon. Joel R. Wohlfeil; (y) *Schaffer v. Rady Children's Hospital-San Diego*, San Diego County Superior Court Case No. 337-2015-00022978; Hon. Joel R. Wohlfeil; (z) *Schneider v. Catholic Healthcare West*, San Francisco County Superior Court, Case No. CGC-10-506243, Hon. Angela Bradstreet; (aa) *Schwartz v Bank of the West*, San Francisco County Superior Court, Case No. CGC-14-538955, Hon. Harold E. Kahn; (bb) *Syed v. M.I. Swaco*, USDC, Eastern District of California, Case No. 12-CV-01718 DAD, Hon. Dale A. Drozd; (cc) *Vaquero, et al. v. Stoneledge Furniture, LLC*, Los Angeles County Superior Court Case No. BC522676, Hon. Elihu M. Berle; (dd) *Vazquez v. Kraft Heinz Foods Company*, USDC, Southern District of California Case No. 16-CV-02749, Hon. William Q. Hayes; (ee) *Walsh v. Cedars-Sinai Medical Center*, Los Angeles County Superior Court Case No. BC487290, Hon. William F. Highberger; among others.

11. We are experienced and consider ourselves qualified to evaluate the claims and defenses in this Action. This allowed our firm to assist in achieving an efficient resolution of the claims in this matter for a non-reversionary Settlement Payment of $750,000 for approximately 220 persons employed by Speech and Language Development Center, Inc. ("SLDC" or "Defendant" or "the School") in California at any time from April 6, 2016 to March 13, 2020. The proposed Settlement is memorialized in the Settlement Agreement and Release of Class and Representative Action, ("Settlement Agreement"), attached as Exhibit 1.

12. Defendant is a non-profit school and therapy center in Buena Park serving children and young adults with language, learning, emotional, social and neurological needs. Students have a broad scope of diagnoses, including Autism Spectrum Disorder. Two speech

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therapists began working with children in 1955, the School steadily grew, and incorporated under its current name in 1963. Its services include transportation by bus to and from school.

13. Due to the COVID-19 Pandemic, the School was closed by order of the Governor from March 13, 2020, until it slowly started to reopen in late August 2020.

14. Julio Ochoa worked for the School as a Special Education Paraprofessional, sometimes referred to as Aide or Bus Aide, from August 2012 through March 2020.

15. The proposed Class is "all persons employed by Defendant in California as non-exempt employees at any time from April 6, 2016 through March 13, 2020 (the "COVID Closure Date"). Class Members worked an estimated 17,961 weeks from April 6, 2016 to March 13, 2020. An estimated 125 Class Members worked 2,053 Pay Periods in the PAGA Period, April 6, 2019 to July 19, 2021. Class Members were paid an average rate of $15.62 per hour, and a $23.43 overtime rate, in average shifts of 6.5 hours

16. On March 31, 2020, Plaintiff's counsel formally requested his personnel file and obtained job applications, work schedules, timesheets, and bi-weekly earnings statements. Defendant produced the requested documents April 30, 2020. On May 13, 2020, Plaintiff filed charges with the Labor and Workforce Development Agency (LWDA). On June 18, 2020, Plaintiff filed the above-captioned Action.

17. Plaintiff filed a First Amended Class Action Complaint (FAC) adding PAGA claims on July 20, 2020. The FAC alleged SLDC failed to provide (1) minimum and overtime wages (§1194); (2) meal and rest periods (§226.7); (3) timely final wages (§203); (4) accurate wage statements (§226); and violated the (5) Unfair Competition Laws ("UCL") (Bus. & Prof. Code §17200); and, (6) PAGA (§2699 et seq.) (citations to the Labor Code, except UCL) (The statute of limitations was tolled. Cal. Rules of Court, App. I, Emergency Rule No. 9.)

18. After receiving LWDA charges and being served with the Action, Defendant retained a new payroll provider and revised its policies and procedures to, among other things, automatically pay premium wages for noncompliant meal periods, and to correctly calculate overtime wages for employees working at two different rates.

19. During initial discussions, the Parties agreed to attend mediation. Plaintiff

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requested and Defendant produced all time and pay data for a random 10% sample of the class, along with policy documents in effect during the class period governing timekeeping, rounding, rest and meal periods, and payment of wages. Defendant also provided numbers of current and former Class and PAGA members, shift lengths, average regular rate, and meal period premiums paid, which were compared to, and confirmed by, an analysis of the data sample.

20. Aides monitor and assist students, on the bus, on campus, and in the classroom. Each student is assigned at least one aide and staff to student ratio ranges from 1:1 to 1:3 for higher functioning students. About one-third of aides were paid different hourly rates depending on whether they were assisting students on the bus or in the classroom.

21. Plaintiff contended the nature of caring for special needs students resulted in rest and meal period violations, and that meal violations were reflected in SLDC's records. Plaintiff also contended SLDC did not correctly calculate overtime wages for employees working at two different hourly rates during a pay period, and paid based only on the lower "bus" rate. Plaintiff also alleged Defendant paid wages on a rounded, rather than actual time, resulted in underpayment of wages. As a result of these violations, Plaintiff contended SLDC did not issue accurate wage statements, and did not pay all final wages when due.

22. The School contended, while it provided appropriate care and education for students at all times, it had compliant rest and meal policies, adequate staffing and procedures to ensure breaks were taken, and to the extent breaks were not taken, or not accurately recorded, those were employee choices. Defendant also contended its rounding policy was facially neutral and resulted in no loss of wages. The School acknowledged a period of time overtime was calculated at the lower of two rates, but contended this effected less than one-third of employees and had little impact because they worked a negligible amount of overtime.

23. The School emphasized that as soon as it became aware of alleged non-compliance, it reviewed and corrected all alleged infractions and paid Class Members properly, including by providing premium wages if compliant rest or meal periods were not provided.

24. SLDC will pay the Gross Settlement Amount (GSA) of $750,000 which includes:(a) attorneys' fees of $250,000 (one-third GSA) to compensate Class Counsel for all

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work performed and remaining to be performed securing final approval; (b) litigation costs up to $12,500; (c) Class Representative Service Payment of $5,000 for risks undertaken for costs if the case had not successfully concluded, and benefits conferred on the Class; (d) $25,000 in PAGA Penalties ($18,750/75% LWDA, $6,250/25% Class Members in PAGA Period); and (e) Administration expenses up to $6,000. Payments are allocated 10% to wages and 45% each to penalties and interest. Defendant will pay its share of payroll taxes in addition to GSA.

25. Counsel entered a joint prosecution agreement allocating fees 50% to Cohelan Khoury & Singer and 50% to Lebe Law, APLC, which Plaintiff consented to in writing.

26. After Court-approved deductions, the estimated Net Settlement Amount (NSA) $451,500 will be distributed based on the number of weeks each Class Member worked during the Class Period compared with the number all worked. Class Members who do not opt-out will receive an average estimated $2,052 ($451,500/220). If the case is preliminarily approved, SLDC will provide workweek data to the administrator, and we will provide the Court with the estimated high and low settlement payments, and Plaintiff's individual payout with the final approval motion.

27. Class Members employed during the PAGA Period will receive a share of the $6,250 PAGA Penalties based on number of Pay Periods worked during the PAGA Period whether they opt-out or not.

28. No portion of the GSA will revert to SLDC under any circumstances. After 180 days of issuance, all uncashed checks will be sent to the State of California Controller, Unclaimed Property Division for further handling on behalf of the Class Member's whose check was voided.

29. Class Members who do not opt out, will release all:

> [C]laims, debts, liabilities, demands, obligations, damages, liens and/or actions or causes of action of any kind that were alleged in the Complaint, or could have been alleged based on the same nucleus of operative facts alleged in the Complaint, and including, but not limited to, claims under California Labor Code sections 201, 202, 203, 226(a), 226(e), 226.7, 558, 1174, 1174.5, 1194, 1194.2, 2699(f), 2699.3, and the Wage Orders promulgated thereunder; and California Business & Professions Code section 17200 *et seq.* The Released Claims specifically exclude claims for workers' compensation, unemployment insurance

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> and state disability compensation, claims under the Employment Retirement Income Security Act of 1974, and claims for previously vested benefits under any Employer-sponsored benefits plan.

30. Class Members employed during the PAGA Period will receive a share of PAGA Penalties, even if they opt-out.

31. After grant of Preliminary Approval, Simpluris, Inc. ("Settlement Administrator"), will search the National Change of Address database, update Class Member addresses, perform skip-tracing, and mail the Notice of Class Action Settlement ("Class Notice") to each Member in SLDC's employment records.

32. The Class Notice explains: how to participate in the Settlement without submitting a claim; dispute the basis of an Individual Settlement Payment; object or opt-out; release to be given, date of Final Approval hearing, and how to obtain further information.

33. The method of distributing the Settlement is fair and reasonable and gives no preferential treatment to any Class Member. Information used is readily available from SLDC's records and the Administrator can apply the formula fairly and transparently.

34. The Settlement was reached as a result of arm's-length negotiations facilitated by retired Los Angeles County Superior Court Judge, Hon. Carl J. West (Ret.). Though cordial and professional, negotiations have been adversarial and non-collusive. While Plaintiff believes in the merits of his case, he recognizes the inherent risks of litigation and the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, the merits of the case after trial, damages awarded, or an appeal that may take several years to litigate.

35. Plaintiff's Counsel investigated the claims and SLDC's defenses before filing PAGA charges. When the Parties agreed to mediate, Plaintiff requested, and Defendant produced documents, information and data which allowed liability to be assessed and Class-wide damages to be calculated. Proof of Class claims in a case of this type is based almost entirely on written policies and an analysis of time and pay records.

36. Extensive investigation and information exchanged gave the Parties a clear understanding of the strengths and weaknesses of their positions before negotiations.

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37. Plaintiff's Counsel have significant experience in litigating wage and hour employment class actions. This allowed Counsel to compare settlement of Class claims with the risks of further litigation, including trial and appeals.

38. Defense counsel, William Browning of BrowningHocker is a skilled and an experienced wage and hour litigator who defended his client vigorously, including through mediation and subsequent negotiations.

39. Plaintiff's Counsel believes the Settlement is fair, reasonable, and in the Class' best interest in light of the monetary recovery, risks of certification/decertification, summary adjudication, the lengthy process of establishing class damages, and delay and uncertainty of appeals.

40. Class Counsel relied on documents and data, including time and pay records for Class Members. Class Counsel reviewed, organized, and analyzed all information, and calculated Class-wide damages through the date of mediation.

41. Plaintiff contended SLDC's data showed a facial meal period violation (potentially late, short, missed) in 50.4% of shifts over five hours and maximum exposure was $419,402. (26,850 shifts x $15.62).

42. The School established the existence of compliant written meal period policies and argued facial exceptions alone cannot support certification or liability, even after *Donohue*. It also argued individual inquires as to why particular employees did not take compliant breaks was likely to prevent certification.

43. Plaintiff believed there was a 50% probability of prevailing at trial, and realistic exposure could not be more than $209,771.

44. Based on Plaintiff's experience, the structure of the school day which appeared to allow for ten-minute rest periods, average shifts of 6.5 hours with about 30% less than six hours, meaning only one rest period would be required, Plaintiff assumed a violation rate for rest periods of 25% for maximum exposure of $199,686. (12,784 shifts x $15.62).

45. The School contended, correctly, there were no records which could establish rest period violations and argued individual issues would prevent certification. Plaintiff believed

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there was only a 20% probability of prevailing at trial, and realistic exposure could not be more than $39,937.

46. A comparison of actual and rounded time showed a small net loss, $13,308, through 2018, and overpayments in 2019 and 2020.

47. Defendant contended further analysis would show no net loss, and such a minimal loss was not a violation. Plaintiff believed there was a 20% probability of prevailing for realistic exposure of $2,661.

48. Analysis of the data provided showed a small amount of overtime worked in 10% of shifts. Overtime damages were calculated by isolating pay periods in which two pay rates were paid, blending those rates, (avg. blended rate $17.18), multiplying by the 1.5 overtime premium, multiplying by the average amount of overtime worked in those shifts (.9 hours), <u>then</u> subtracting the estimated amount of overtime paid at the unblended, lower hourly rate. Total maximum exposure was $11,244. (5,339 shifts x .9 x $17.18 x 1.5 <u>minus</u> 5,339 x .9 x $15.62 = $123,827 - $112,583).

49. Defendant noted the minimal amount found, and contended further analysis would show less or no unpaid overtime. Plaintiff believed there was a 50% probability of prevailing for realistic exposure of $5,622.

50. The School's liability for wage statement violations was completely derivative of its other alleged violations. Based on estimated class members and pay periods from April 6, 2017, three years before filing, through March 13, 2020, Plaintiff estimates maximum exposure of $500,000. (125 class members x $4,000).

51. Given that Plaintiff's Counsel believed the strongest claim was the section 226.7 meal period premium claim, exposure on the section 226 claim was severely limited. Based on these risks, Plaintiff believed there was only a 10% chance of prevailing on certification and liability for this claim for a realistic exposure of approximately $50,000.

52. Based on the School's records it was estimated 55 employees, from April 6, 2017 to July 21, 2021, were owed wages when their employment ended, for maximum exposure of $167,525. [55 class members x 6.5 hours x $15.62 per hour x 30 days]. (Although employees

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did not work at all for at least five months, some did not return, and some worked intermittently when they did, and the alleged violations were corrected before employees returned, the section 203 final wages claim was calculated through the release period, July 19, 2021, rather than stopped at the Covid Closure date, March 13, 2020. This was based on the theory that a final wage violation could have occurred during this period.)

53. Plaintiff's counsel believed there was only a 20% probability of prevailing based on the necessity of certifying and proving the underlying wage violations and showing willfulness, and estimated realistic exposure for this claim at $33,505, based on these risks.

54. Using initial violation rates for 2,053 pay periods, maximum penalties were estimated at $1,115,600 for five violations: Sec. 226.7 (meal) - $205,300; Sec. 226.7 (rest) - $205,300; Sec. 510, 1194 (all wage claims) – $205,300; Sec. 226.3 (wage statements) – $513,250; Sec. 203 (final pay) – $2,500. (all at $100 per pay period, 226.3 at $250.)

55. Based on risks and the Court's ability to reduce or eliminate any civil penalty that is deemed punitive or confiscatory under the circumstances, Plaintiff discounted PAGA penalties for settlement 25%, for a maximum settlement value of $278,900.

56. The Gross Settlement Amount represents over 57% of the maximum exposure for Class claims. ($750,000 /$1,311,165 = 0.572), and over 100% of their reasonable value ($750,000/$641,810 = 1.16).

57. Settlement Payments are characterized as 10% wages, 45% penalties and 45% interest. This is roughly consistent with alleged maximum exposure: $2,755,759/100% - $643,638/23.35% (wages, rest/meal premiums), $2,419,496/11.94% (interest), $1,783,125/64.71% (wage statement, waiting time, PAGA penalties).

58. The Settlement is an excellent recovery for the Class and well within the "ballpark" of reasonableness.

59. Mr. Ochoa has and will continue to adequately protect the interests of the Class. He accepted the risks of serving as class representative, including by placing his name on a lawsuit on behalf of the class, which may diminish his prospects with certain employers, and which exposed him to the risk of a judgment for costs if the case did not successfully conclude.

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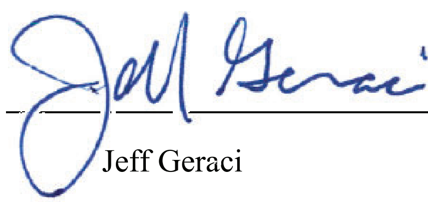
He has spent significant time communicating with me and my office and assisting in the prosecution of the action, and has at all times placed the interests of the class above his own. If the case is preliminarily approved, Mr. Ochoa will provide a declaration regarding the nature of his participation in the action, time committed and risks faced. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

60. Class Counsel are qualified to conduct the litigation and Plaintiff's interests are not antagonistic to Class interests.

61. On the same date this motion and its exhibits are filed with the Court, they will be served upon Defendant and provided to the Labor and Workforce Development Agency ("LWDA") via the LWDA's website, www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act., using the appropriate intake form. Attached as Exhibit 2 is a true and correct copy of the LWDA confirmation of Receipt.

I declare under the penalty of perjury under the laws of the State of California the foregoing is true and correct and this declaration is executed March 24, 2022, in San Diego, California.



Jeff Geraci

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

EXHIBIT 1

COHELAN KHOURY & SINGER
Michael D. Singer (SBN 115301)
msinger@ckslaw.com
Jeff Geraci (SBN 151519)
jgeraci@ckslaw.com
605 C Street, Suite 200
San Diego, CA 92101
Telephone: (619) 595-3001 / Fax: (619) 595-3000

LEBE LAW, APLC
Jonathan M. Lebe (SBN 284605)
jon@lebelaw.com
Zachary Gershman (SBN 328004)
zachary@lebelaw.com
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046

Attorneys for Plaintiff Julio Ochoa, individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JULIO OCHOA, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SPEECH AND LANGUAGE DEVELOPMENT CENTER, INC.; and DOES 1 through 25, inclusive

Defendants.

Case No. 30-2020-01143577-CU-OE-CXC

SETTLEMENT AGREEMENT AND RELEASE OF CLASS AND REPRESENTATIVE ACTION

Exhibits:

A. Notice of Class Action Settlement
B. Change of Address Form
C. Letter to LWDA ("PAGA Notice")

Complaint filed: June 18, 2020
Trial date: Not set

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San Diego, CA 92101
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IT IS STIPULATED, by Plaintiff Julio Ochoa, individually, and on behalf of all others similarly-situated and aggrieved, and Defendant Speech and Language Development Center, Inc., subject to the approval of the Court, this class action is compromised and settled pursuant to the terms and conditions set forth below in this Settlement Agreement and Release of Class and Representative Action Claims, ("Settlement Agreement"):

DEFINITIONS

1. "Action" means the putative class action entitled *Julio Ochoa v. Speech and Language Development Center, Inc.,* filed on June 18, 2020 and amended on July 20, 2020 by a First Amended Complaint, in the Superior Court for the State of California, County of Orange, Case No. 30-2020-011443577-CU-OE-CXC, and assigned to the Honorable James J. DiCesare.

2. "Aggrieved Employee" means all persons employed by Defendant in California as a non-exempt employee at any time from April 6, 2019 through March 13, 2020. Due to the COVID-19 Pandemic, Defendant was shut down by order of the Governor March 13, 2020. Before Defendant re-opened, Plaintiff's PAGA notice was received, and Defendant took steps to ensure that any alleged payroll process errors were corrected. The March 13, 2020 date is referred to as the "COVID Closure Date."

3. "Agreement," or "Settlement Agreement," or "Settlement" means this Settlement Agreement and Release of Class and Representative Action Claims.

4. "Attorneys' Fees and Costs Payment" means payment of attorneys' fees and litigation costs awarded to Class Counsel by the Court for services rendered to Plaintiff and the Class and expenses incurred in prosecuting the Action, including, but not limited to, costs of documenting the Settlement, providing notices required as part of the Settlement or Court order, and securing Court approval of the Settlement. The Attorneys' Fees and Costs Payment will be paid out of—and will not increase—the Gross Settlement Amount. Any portion of the Attorneys' Fees and Costs Payment not awarded shall remain with the Maximum Settlement Amount and made available for payments to Participating Class Members.

5. "Class Member(s)" means: all persons employed by Defendant in California as non-exempt employees at any time from April 6, 2016 through March 13, 2020. (the "COVID

Closure Date.")

6. "Class" means the collective group of those individuals who are Class Members.

7. "Class Counsel" means Cohelan Khoury & Singer and Lebe Law, APLC.

8. "Class Notice" (or "Notice") means the Court-approved Notice of Class Action Settlement to be mailed to Class Members to inform them of the terms of the proposed Settlement, substantially in the form attached as Exhibit "A." The Notice will be mailed together with a Change of Address Form, attached as Exhibit "B", and pre-printed return envelope ("Notice Packet").

9. "Class Period" means April 6, 2016 through July 19, 2021. Defendant represents there are 220 Class Members with an estimated 8,425 Pay Periods during the period April 6, 2016 through the COVID Closure Date. Class Members were paid twice per month, and had two "Pay Periods" per month.

10. "Complaint" means the First Amended Complaint ("FAC") filed July 20, 2020 which alleges the following claims on behalf of Plaintiff and the putative Class: failure to provide (1) minimum wages for all hours worked; (2) overtime wages (3) compliant rest breaks or pay in lieu of breaks; (4) compliant meal breaks or pay in lieu of breaks; (5) accurate wage statements; (6) timely payment of earned wages; and based on these alleged violations, (7) violation of the Unfair Competition Law; and (8) PAGA penalties for failure to provide minimum, overtime, and final wages, rest and meal periods, and accurate wage statements.

11. "Court" means the Superior Court of the State of California County of Orange.

12. "Defendant" (or "SDLC") means Speech Language Development Center, Inc.

13. "Defendant's Counsel" means William K. Browning, Esq., Browning|Hocker.

14. "Employer Tax Obligations" means Defendant's share of payroll taxes, including, but not limited to, FICA, Medicare, ETT, FUTA, and SUTA, for the portion of the Gross Settlement Amount treated as wages. The Tax Obligations shall be paid by Defendant in addition to the Gross Settlement Amount. The Parties agreed to allocate the Settlement Payment, 10% percent as wages for which an IRS Form W-2 will be issued, and 45% as penalties, and 45% as interest for which IRS Forms 1099 will be issued.

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15. "Effective Date of Settlement" means the earlier of (a) if any timely objection is filed and not subsequently withdrawn, the 65th day after the Court enters an order granting final approval of the Agreement; or, (b) if any timely appeal is filed, the date it is resolved (or withdrawn), or; (c) if no timely objection is filed, or if all objections are withdrawn, the date which the Court enters an order granting Final Approval and entering Judgment.

16. "Final Approval" is the date a Final Approval Order and Judgment are entered.

17. "Final Approval Hearing" means a Court hearing to consider Final Approval of the Settlement, award of attorneys' fees and litigation costs to Class Counsel, Service Payment to the Class Representative Julio Ochoa, and the merits of any objections to the Settlement.

18. "General Release" means the release in which Plaintiff releases his individual claims only, and agrees to release the Released Parties from all claims, demands, liabilities, and causes of action of every kind, known or unknown, asserted or unasserted, whether in tort, contract, or any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by any Released Parties during the Class Period, including a waiver of Civil Code §1542.

> Section 1542. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, that if known to him or her must have materially affected his or her settlement with the debtor or released party.

19. "Gross Settlement Amount" (or "GSA") means the total amount Defendant will pay under this Settlement in full satisfaction of all claims arising from the Action, and includes all Payments to Participating Class Members, Class Representative Service Payment, Settlement Administration Costs, PAGA Payment to the Labor and Workforce Development Agency ("LWDA"), and Attorneys' Fees and Costs. The GSA is equal to and shall not exceed $750,000. No portion of the GSA may revert to Defendant under any circumstances. Defendant shall be required to pay only the GSA and the Employer Tax Obligation in paragraph 14.

20. "Individual Settlement Payment" or "Settlement Payments" means the payment to Participating Class Members based upon the formula set forth in this Agreement.

21. "Net Settlement Amount" (or "NSA") means the amount remaining after Court-

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approved deductions from the GSA for the Settlement Administration Payment, Attorneys' Fees and Costs Payment, Class Representative Service Payment, and the PAGA Payment. The NSA will be distributed to all Participating Class Members.

22. "Notice Packet" means the Notice of Class Action Settlement (**Exhibit "A"**), and Change of Address Form (**Exhibit "B"**), and the pre-printed return envelope mailed by the Settlement Administrator.

23. "PAGA Notice" means the May 13, 2020 letter Plaintiff sent to the LWDA and Defendant informing them of Plaintiff's intention to file a representative action on behalf of all other similarly aggrieved employees.

24. "PAGA Payment" means $25,000 paid from the GSA of which 75% ($18,750) will be paid to the LWDA for all PAGA civil penalties and 25% ($6,250) will be distributed to Aggrieved Employees based on the number of Pay Periods worked during the PAGA Period.

25. "PAGA Period" means that period from April 6, 2019 through July 19, 2021. Defendant represents there are 125 Aggrieved Employees with an estimated 2,053 Pay Periods during the period April 6, 2019 through the COVID Closure Date. Aggrieved Employees were paid twice per month, and had two "Pay Periods" per month.

26. "Participating Class Members" means Class Members who do not postmark a request to Opt Out by the Response Deadline. Upon the Effective Date of Settlement, all Participating Class Members will be mailed an "Individual Settlement Payment."

27. "Parties" means Plaintiff and Defendant collectively.

28. "Plaintiff" or "Class Representative" means Julio Ochoa.

29. "Preliminary Approval" means entry of a court Order preliminarily approving the Settlement terms, notice to the Class, and setting a Final Approval Hearing.

30. "Preliminary Approval Order" means the order issued by the Court preliminarily approving the terms and conditions of this Settlement, including the form and manner of providing notice to the Class.

31. "Released Claims" means all claims, debts, liabilities, demands, obligations, damages, or causes of action of any kind alleged in the Complaint, or that could have been

alleged based on the same operative facts alleged in the Complaint, and including claims under California Labor Code sections, 203, 204, 210, 226(a), 226.2(a)(2), 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2699(f), 2699.3, the corresponding Wage Orders; and Business & Professions Code section 17200 *et seq.*, from April 6, 2016 through July 19, 2021. The Released Claims specifically exclude claims for workers' compensation, unemployment and state disability insurance, claims under the Employment Retirement Income Security Act of 1974, and claims for previously vested benefits under Employer-sponsored benefits plan.

32. "Released Parties" means Defendant and its past, present, and future owners, officers, directors, principals, joint employers, employees, agents, representatives, accountants, auditors, attorneys, consultants, insurers, reinsurers, partners, investors, shareholders, parent companies, subsidiaries, affiliates, predecessors, successors, assigns, and joint venturers.

33. "Response Deadline" means the date by which Class Members postmark and return a valid Opt Out request, written objection, or written dispute of information on which their Settlement Payment is based. The Response Deadline will be 45 calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be the next day the U.S. Postal Service is open. The Response Deadline will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be the next day the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendant. The Settlement Administrator will not have the authority to unilaterally extend these deadlines.

34. "Service Payment" means the amount the Court authorizes to be paid to Plaintiff in addition to his Individual Settlement Payment, in recognition of his efforts in obtaining benefits for the Class, for policy changes benefitting current and future employees, for undertaking the risk of a judgment for costs if this matter had not successfully resolved, and for providing a General Release of all claims against Released Parties. Defendant will not oppose Plaintiff's request for a $5,000 Service Payment paid from the GSA.

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35. "Settlement" means the terms and conditions in this Settlement Agreement.

36. "Settlement Administrator" means Simpluris, Inc. the third-party the Parties mutually agree shall serve as Settlement Administrator.

37. "Settlement Administration Payment" means the payment to the Settlement Administrator for the actual and direct costs reasonably charged by the Administrator for its services in administering the Settlement. The Settlement Administration expenses are expected not to exceed $6,000. The Settlement Administration Payment shall be paid from the GSA.

38. "Workweeks" means any week in which a Class Member worked at least one (1) day in that week as shown in Defendant's employment records. Defendant has represented there are 17,961 Workweeks worked by the 220 members of the Class from April 6, 2016 through the COVID Closure Date. If the aggregate number of Workweeks increases by more than 10%, the GSA will increase by a proportionate percentage for all additional Workweeks exceeding 10%.

PROCEDURAL HISTORY AND INVESTIGATION OF CLAIMS

39. On May 13, 2020, Plaintiff served his PAGA Notice on the LWDA and SLDC informing them of his intention to file a representative action on behalf of himself and all other aggrieved employees for civil penalties for violation of various Labor Code provisions. Exh. C.

40. On June 18, 2020, Plaintiff filed a complaint initiating this Action. The LWDA did not provide notice it intended to investigate the charges in the PAGA Notice and Plaintiff filed a First Amended Complaint ("FAC") on July 20, 2020 adding claims for PAGA penalties.

41. After receiving Plaintiff's May 13, 2020 PAGA Notice, SLDC retained a new payroll company and revised its policies and procedures to, among other things, automatically pay meal period premiums for noncompliant meal periods, and to correctly calculate all overtime wages.

42. SLDC asked for an opportunity to explore a class-wide settlement. Counsel for the Parties agreed to mediate and in preparation for mediation, Plaintiff requested and Defendant informally produced its written policies and procedures covering the Class Period, the number of Class Members and Aggrieved Employees during the Class and PAGA Periods,

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the number of workweeks and pay periods during those Periods, the average aggregate rate of pay, and a 10% random sample of all time and wage data for class members.

43. Plaintiff's consultant analyzed the information and data produced by SLDC and prepared Class-wide damage model for mediation. On April 20, 2021, the Parties attended mediation with Hon. Carl J. West (Ret.), of JAMS, a respected and experienced wage and hour mediator, who facilitated serious and informed negotiations. By the end of the day, the Parties reached agreement on the Gross Settlement Amount, and other material terms and entered a written Memorandum of Understanding.

PLAINTIFF'S CLAIMS

44. Plaintiff claimed and continues to claim the Released Claims have merit and give rise to Released Parties' liability. Neither this Agreement nor any documents referred to, or any action taken to carry out this Agreement is, or may be construed as, or may be used as, an admission by or against the Class Members or Class Counsel or any Party or Counsel as to the merit or lack of merit of claims asserted, except to show resolution of the Released Claims.

NO ADMISSION OF LIABILITY

45. SLDC denies all Plaintiff's allegations and contends it complied with all wage and hour laws at all times. This Agreement represents a compromise and settlement of the Action. Neither this Agreement, nor any document referred to or contemplated, nor any action taken to carry out this Agreement may be construed as an admission or concession by or against Released Parties that Plaintiff's claims in the Action have merit or that they have any fault, wrongdoing, or liability to Plaintiff or the Class on those claims whatsoever, including any concession that certification of a class continues to be appropriate in this case.

46. This Agreement is made for the sole purpose of settling all causes of action contained in the First Amended Complaint. By entering into this Agreement, the Parties do not admit the allegations or contentions of the other Party, and each Party is entering into this Agreement for the sole purpose of resolving this matter and avoiding the time and expense of litigation. The Released Parties specifically deny all of Plaintiff's claims, as well as Plaintiff's class and representative allegations, and expressly reserve all rights to challenge all such claims

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and allegations upon all procedural and substantive grounds, including the assertion of any and all defenses if this Settlement is not approved by the Court.

INADMISSIBILITY OF SETTLEMENT AGREEMENT

47. Whether or not the Settlement is finally approved, neither the Settlement, nor its terms, nor any document, statement, proceeding, or conduct related to this Agreement, shall be:

A. Offered as or admitted in evidence as, or construed to be evidence for any purpose adverse to Released Parties, including, but not limited to, evidence of a presumption, concession, or admission of any liability, fault, or wrongdoing; or

B. Disclosed, referred to or offered or received in evidence against any Released Party, in any further proceeding in the Action, or in any other civil, criminal, or administrative action or proceeding except for purposes of enforcing the terms of this Agreement or enforcing the release of the Released Claims.

FAIRNESS AND BENEFITS OF SETTLEMENT TO THE CLASS

48. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff has also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in the maintenance of class certification. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's affirmative defenses, and the difficulties in establishing damages for the Class. Plaintiff has also considered the information exchanged at the mediation facilitated by Judge West to reach agreement on all material terms of this Settlement Agreement. Based on the foregoing, Plaintiff, Class Counsel, Defendant, and Defendant's Counsel have determined that the Settlement set forth in this Agreement, and its terms, are fair, adequate, equitable and reasonable, the product of good faith, arms'-length negotiations between the Parties, are consistent with public policy, and fully comply with applicable provisions of law, and in the best interests of all Class Members.

RELEASE AS TO ALL CLASS MEMBERS

49. Plaintiff agrees that upon the Effective Date, the General Release shall be

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effective and he shall have no further claims against the Released Parties. Upon the Effective Date, all Participating Class Members shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, released the Released Parties from the Released Claims. The Settlement Payments shall be paid to Participating Class Members specifically in exchange for the release of the Released Parties from the Released Claims. However, the releases shall be effective as to all Class Members who have not opted out, regardless of whether they subsequently refuse their portion of the Settlement Payment, claim not to have received it, or fail to negotiate the settlement check(s) from the Claims Administrator.

FUNDING AND DISTRIBUTION OF GROSS SETTLEMENT AMOUNT

50. Within five days (5) days of the Effective Date, Defendant shall pay the $750,000 Gross Settlement Amount to the Settlement Administrator and the Employer Tax Obligations as calculated by the Administrator.

51. Following Court-approved deductions for Attorneys' Fees of one-third of the GSA ($250,000), and Costs (up to $12,500), Service Payment ($5,000), PAGA payment to the LWDA and Aggrieved Employees ($18,750/$6,250, 75%/25% of $25,000), and Settlement Administration expenses ($6,000), the remaining sum, the Net Settlement Amount estimated at $451,500 will be distributed to Participating Class Members on a proportionate basis using the number of Workweeks worked during the Class Period in relation to the aggregate number of Workweeks worked by all Participating Class Members during the Class Period.

52. The amount of $6,250 (25% of the $25,000 PAGA payment) will be distributed to Class Members who worked during the PAGA Period, "Aggrieved Employees," based on the number of Pay Periods they worked during the PAGA Period, whether they opt out or not.

53. Within ten (10) business days of the receipt of the GSA, the Settlement Administrator shall distribute the Settlement Payments to Participating Class Members, the PAGA Payment to the LWDA, the Court-approved sums for Attorneys' Fees and Litigation Costs, the Service Payment, and the Settlement Administration Payment.

NOTICE AND APPROVAL OF SETTLEMENT AND IMPLEMENTATION

54. The Parties agree to the following procedures for obtaining Preliminary

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Approval of the Settlement, and providing notice of the Settlement to the Class:

A. Preliminary Approval Hearing. Class Counsel shall move the Court for Preliminary Approval of the Settlement, and will submit this Agreement with that motion.

B. Information Regarding Class. Within fourteen (14) calendar days of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list showing for each member of the Class the following information: name, most current or last known mailing address, telephone number(s) and email address as indicated in Defendant's records, social security number, dates of employment, and the aggregate number of Workweeks, and aggregate number of Pay Periods (the "Class Data List").

C. Notice to Class Members. The Settlement Administrator shall mail the Court-approved Notice Packet by U.S. First Class Mail to all Class Members within ten (10) business days of receipt of the Class Data List.

D. Settlement Administrator. The Settlement Administrator shall (a) print and mail Notice Packets as directed by the Court; (b) establish a toll-free number and post-office box for Class Member communications; (c) receive and review all actual or potential Class Member communications; (d) consult with the Parties' counsel as needed concerning data, resolution of disputes, and status of the settlement process, (e) receive and track Class Member communications; (f) provide weekly status reports; (g) calculate and inform Defendant of its Employer Tax Obligations; (h) calculate Individual Settlement Payments, including taxes and withholdings; (i) distribute Individual Settlement Payments; (j) submit tax documents to taxing authorities; (k) handle uncashed checks; (l) cooperate with counsel for the Parties as necessary to prepare declarations in support of motions for preliminary and final Settlement approval; and, (m) perform such other tasks set forth in this Agreement, or as the Parties mutually agree, or the Court orders be performed. The Parties each represent they have no financial interest in the Settlement Administrator or any relationship that could create a conflict of interest. The Parties agree to cooperate in the settlement administration process and make all reasonable efforts to control and minimize the Settlement Administration Payment.

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CLASS NOTICE

55. The Parties agree to give notice of this Settlement to the Class as follows:

A. Before mailing the Notice Packets, the Settlement Administrator will update all Class Member addresses using the National Change of Address database and other suitable resources. For former employee Class Members, the Settlement Administrator shall verify addresses using Accurint, or similar skip tracing. If this yields an updated address, that address shall be used to mail Notice Packet and all Settlement mailings. After updating addresses, the Settlement Administrator shall mail a Notice Packet to each Class Member by first class U.S. Mail within ten (10) business days of receipt of the Class Data List. The envelope containing the Notice shall include the following language on the exterior:

> **IMPORTANT LEGAL DOCUMENT**:
> **You may get Money from a Class Action Settlement; your prompt reply to correct a BAD address is required.**

B. Notice Packets returned to the Settlement Administrator with a forwarding address shall be re-mailed by the Administrator within five (5) business days of receipt. All Notice Packets returned to the Settlement Administrator as non-deliverable shall be researched by the Administrator using the Class Member's social security number to determine a possible new address, and if a new address is located, the Notice Packet shall be re-mailed within five (5) business days of receipt of the returned Notice Packet. Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) calendar days from the original Response Deadline. If a Notice Packet to a currently employed Class Member is returned as undeliverable, the Settlement Administrator will notify the Parties and Defendant shall confirm the most recent address they have and provide it to the Administrator for remailing within five (5) business days of receipt of the updated address.

C. Class Members will be responsible for keeping the Settlement Administrator apprised of any changes of address.

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PROCEDURE FOR OBJECTING TO

OR REQUESTING EXCLUSIONFROM THE SETTLEMENT

56. Class Members who wish to object to the Settlement or exclude themselves from the Class shall use the following procedures:

A. Objecting. The Class Notice shall state any Class Member who wishes to object to the Settlement may return to the Settlement Administrator, a written statement which includes the specific reasons for the objections and supporting materials on or before the Response Deadline. Class Members may also appear at the time of the Final Approval Hearing without first submitting a written objection.

B. Requesting Exclusion from the Settlement. Class Members must return a request to Opt Out (as directed by the Notice) which is dated, signed, and postmarked no later than the Response Deadline. A valid Opt Out should include the Class Member's name, address, telephone number, and the last four (4) digits of the social security number, and be signed. In the event the postmark on the return envelope is illegible, the Opt Out will be deemed untimely unless it is received within five (5) calendar days of the Response Deadline. Any Class Member who properly opts out of the Class will not receive any payment from the Net Settlement Amount, will not be bound by the Settlement or have any right to object or appeal. Class Members who do not submit a valid and timely request for exclusion, shall receive an Individual Settlement Payment and be bound by all Settlement terms and any Judgment entered in this Action. If a Class Member who Opts Out, is also an Aggrieved Employee, they will receive their share of the PAGA Payment.

NO SOLICITATION OF OBJECTIONS OR EXCLUSIONS

57. The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall any Party or their counsel seek to solicit or otherwise encourage anyone to object to, or request exclusion from, the Settlement, nor encourage anyone to appeal from the Court's Judgment.

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CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS AND TAX OBLIGATIONS PAYMENT

58. The Settlement Administrator shall have the authority and obligation to calculate the Individual Settlement Payments in accordance with the methodology in this Agreement and orders of the Court. Participating Class Members will receive an Individual Settlement Payment based upon their number of Workweeks in relation to the aggregate number of Workweeks worked by all Participating Class Members during the Class Period. Aggrieved Employees will also receive a proportionate share of the $6,250 PAGA Payment based on their number of Pay Periods worked during the PAGA Period in relation to the aggregate number of Pay Periods worked by all Aggrieved Employees during the PAGA Period.

59. Each Class Member's aggregate number of Workweeks will be included in his or her Class Notice. Any Class Member wishing to dispute Workweek information must do so in writing by the Response Deadline and submit all supporting evidence to the Settlement Administrator at that time. Within seven (7) days after receipt of any letter raising a dispute, but no later than seven (7) days after the Response Deadline, the Settlement Administrator and Counsel for the Parties will determine, based on information and documentary evidence provided, whether the information provided by the Defendant was correct. The Settlement Administrator will consult with Counsel for the Parties in reaching this determination. The Settlement Administrator will give written notice to the Class Member of the determination of each dispute. Any disputes over the Class Member's aggregate number of Workweeks on which the Parties cannot agree shall be resolved by the Court. All communications Counsel for the Parties receive from Class Members which suggests an objection to the Settlement will be provided to the Court with the Final Approval Motion.

60. The Parties agree the formula for allocating Individual Settlement Payments to the Class is reasonable and payments are designed to provide a fair settlement to the Class, despite any uncertainty regarding the compensation and penalties alleged and their calculation.

61. Each Participating Class Member will be responsible for paying all applicable local, state, and federal taxes on Settlement Payments and will be provided with W-2 and 1099

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tax forms. Each Participating Class Member shall cooperate with Defendant and the Settlement Administrator and provide documentation to demonstrate such payment should any taxing authority challenge the allocation of the Settlement Payments.

62. It shall be the responsibility of the Settlement Administrator or its designee to timely calculate and withhold from the Settlement Payments all Participating Class Member tax obligations on the portion allocated as wages; calculate and report to Defendant its Employer Tax Obligations; prepare and deliver necessary tax documents for signature by all necessary parties, and to cause appropriate deposits of withholding taxes and filing of all necessary tax documents. The Settlement Administrator shall pay the Employer Tax Obligations to the appropriate taxing authorities within thirty (30) days of receipt from Defendant.

63. Defendant makes no representations as to the tax treatment or legal effect of payments under the Settlement, and Plaintiff and Participating Class Members are not relying on any statement or representation by Defendant in this regard. Plaintiff and Participating Class Members understand and agree that except for Defendant's payment of the employer's portion of any payroll taxes, they will be solely responsible for the payment of any taxes and penalties assessed on Settlement payments.

ATTORNEYS' FEES AND COSTS PAYMENT AND SERVICE PAYMENT

64. Class Counsel shall request an amount up to $250,000 (one-third of the GSA) as Attorneys' Fees, and reimbursement of litigation costs up to $12,500. Amounts paid in fees and costs shall be for all claims for attorneys' fees, expenses, or costs past, present, and future incurred in the Action. Defendant shall not oppose Class Counsel's requests in these amounts.

65. Plaintiff Julio Ochoa shall request up to $5,000 as a Service Payment for having initiated this Action, work performed, and the risk of a judgment for costs in the event this matter had not successfully concluded, for substantial benefits conferred upon the Class, including benefits conferred upon current and future employees as a result of actions taken by following initiation of the Action, and a General Release of claims. Defendant shall not oppose the Service Payment request in this amount. This payment shall not have taxes withheld and will be reported on IRS Form 1099. Plaintiff shall be responsible for paying any taxes owing.

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PAGA PAYMENT

66. The Parties allocated $25,000 to settle the Aggrieved Employees' PAGA penalty claims under Labor Code § 2699, ("PAGA Payment"). PAGA requires this amount be distributed 75% to the LWDA, and 25% to the Aggrieved Employees. A total of $18,750 will be paid to the LWDA, and the remaining $6,250 will be distributed to Aggrieved Employees based on the number of Pay Periods worked during the PAGA Period.

FINAL APPROVAL HEARING AND ENTRY OF ORDER AND JUDGMENT

67. Following the Response Deadline, on a date set by the Court, the Court will conduct a Final Approval Hearing upon the filing of a Motion for Order Granting Final Approval and Entering Judgment.

PROCEDURE FOR PAYMENT OF INDIVIDUAL SETTLEMENT PAYMENTS

68. Following Final Approval, and solely for purposes of this Agreement, the Settlement Payments shall be distributed based on the following eligibility:

A. Participating Class Members shall receive an Individual Settlement Payment under the plan of allocation and will be bound by the terms of the Settlement and any order or judgment entered by the Court approving this Settlement.

B. Class Members who timely opt out, are not Participating Class Members, and will not be bound by this Settlement or a judgment approving the Settlement. The funds forgone by Class Members who Opt Out will remain part of the Net Settlement Amount and proportionally increase each Participating Class Member's final Individual Settlement Payment. All Aggrieved Employees will receive a proportionate share of the 25% portion of the PAGA Penalty even if they Opt Out of the Settlement.

69. Individual Settlement Payments to Participating Class Members shall be paid pursuant to the formula and at the times stated in this Agreement. The Settlement Administrator's determination of eligibility for, and the calculations of, Settlement Payments shall be conclusive, final, and binding on all Parties, including all Class Members.

70. Settlement Payment checks issued to Participating Class Members remain valid and negotiable until 180 calendar days after the date of issuance and may automatically be

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canceled if not cashed within that time. All sums represented by uncashed checks will be forwarded to the State of California, Controller's Unclaimed Property Division for further handling on behalf of the Class Member or Aggrieved Employee whose check was voided.

71. No person shall have any claim against the Released Parties, Defendant's Counsel, the Plaintiff, the Class, or Class Counsel, based on mailings, calculations, distributions, or payments made pursuant to this Agreement.

NULLIFICATION OF SETTLEMENT AGREEMENT

72. In the event the Court does not: (i) enter an Order as requested; (ii) finally approve the Settlement; (iii) enter a final Judgment, or the Settlement does not become effective for any other reason, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. The Parties shall then be returned to their status as of the date and time immediately before the execution of this Agreement, and they shall proceed in all respects as if this Agreement had not been executed. In the event an appeal is filed from the Court's Judgment, or any other appellate review is sought before the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

NOTIFICATION AND CERTIFICATION BY SETTLEMENT ADMINISTRATOR

73. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions of Settlement Payments and upon completion of administration of that portion of the Settlement, shall provide written certification of progress of completion to counsel for all Parties and the Court as requested.

NO EFFECT ON EMPLOYEE BENEFITS

74. The Settlement Payments issued and paid to Participating Class Members and the Service Payment issued and paid to Plaintiff shall be deemed not to be "pensionable" earnings and shall not have any effect on the eligibility for, accrual of, or calculation of, any employee benefits (*e.g.* vacations, holiday pay, retirement plans, 401(k), Employee Stock Purchase Plan, etc.) of the Plaintiff or Participating Class Members. The Parties agree any Settlement Payments to Participating Class Members and the Service Payment under the terms

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of this Agreement do not represent any modification of Participating Class Members' previously credited hours of service or other eligibility criteria under any employee plan for stock purchase, pension benefit, or employee welfare benefit sponsored by Defendant.

GENERAL PROVISIONS

75. Exhibits. The terms of this Agreement include the terms in **Exhibits A - C**, which are incorporated by reference as though fully set forth. Any exhibits to this Agreement are an integral part of the Settlement. Any changes to exhibits following preliminary approval by the Court, shall be approved by all Parties, but shall not be re-submitted to the Court if changes are minor, clerical, and do not materially alter the originally submitted documents.

76. Headings. The descriptive headings of any paragraphs or sections of this Agreement are for convenience only and do not constitute a part of this Agreement.

77. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the Action in abeyance pending the Final Approval Hearing, except proceedings necessary to complete and implement the Settlement.

78. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

79. Entire Agreement. This Agreement and attached Exhibits are the entire agreement of the Parties, and no oral or written representations have been made to any Party concerning this Agreement or its Exhibits. All prior negotiations, agreements, understandings, and representations, written or oral, are expressly superseded, have no effect, and each Party acknowledges it has not relied on any such agreements, understandings, or representations.

80. Authorization to Enter Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties they represent to negotiate this Agreement and take all appropriate action required or permitted to be taken by such Parties to effectuate this Agreement, and to execute any other documents required to effectuate its terms. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement. If the Parties are unable to agree on the form or content of any document needed to implement the Settlement, or any supplemental provision needed to

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effectuate the Settlement, they may seek assistance from the Mediator or Court.

81. Binding Agreement. The Parties intend this Agreement to be fully enforceable and binding on all Parties, including Class Members, and it shall be admissible in any proceeding to enforce its terms pursuant to California Code of Civil Procedure section 664.6.

82. Binding on Successors. This Agreement shall be binding upon, and inure to the benefit of, the heirs, beneficiaries, or successors of the Parties.

83. Assignment. No right or obligation in this Agreement may be assigned by any Party, Class Member, or Class or Defendant's Counsel without the express written consent of the other Party and their counsel. The representations and warranties in this Agreement are for the sole benefit of the Parties and do not confer any right to any other person.

84. California Law Governs. All terms of this Agreement and the Exhibits shall be governed by and interpreted according to the laws of the State of California.

85. Venue. Any dispute regarding interpretation or validity of, or otherwise arising out of, this Agreement, or relating to the Action or Released Claims, shall be subject to the exclusive jurisdiction of the Court in which the Parties seek Settlement approval, and the Parties agree to submit to the personal and exclusive jurisdiction and venue of that Court.

86. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class action certification only for purposes of the Settlement. If, for any reason, the Settlement is not approved, the stipulation to certification will be void and will not be admissible in this or any other proceeding as evidence a class action should be certified.

87. Binding Agreement. The Parties have full authority to enter into this Settlement, and intend this Settlement Agreement to be fully enforceable and binding on all Parties.

88. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

89. Facsimile and Electronic Signatures. A signed facsimile or electronic version of this Agreement shall have the same force and effect as a signed original of this Agreement.

90. Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all

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orders and judgments entered in connection with the Agreement, and the Parties and their counsel submit to the jurisdiction of the Court for these purposes. In the event judicial intervention or enforcement is necessary, the prevailing Party shall be entitled to an award or attorneys' fees, costs, and interest.

91. Cooperation and Drafting. Each of the Parties has cooperated in the drafting and preparation of this Agreement and its language shall not be construed against any of the Parties.

92. Invalidity of Any Provision. The Parties request before declaring any provision of this Agreement invalid, the Court first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents.

THE PARTIES SO AGREE:

Plaintiff/Class Representative

Date: 8/10/2021, 2021 By: [signature]

Julio Ochoa, Plaintiff Class Representative

SPEECH AND LANGUAGE DEVELOPMENT CENTER, INC.

Date: ______________, 2021 By: ______________________

Adrienne Kessler, CEO

Date: ______________, 2021 **BROWNING|HOCKER**

By: ______________________

William Browning
Attorneys for Defendant

Date: August 10, 2021 **LEBE LAW, APLC**

By: [signature]

Jonathan M. Lebe
Attorneys for Plaintiff / Class Representative

Date: August 10, 2021 **COHELAN KHOURY & SINGER**

By: Jeff Geraci

Jeff Geraci
Attorneys for Plaintiff / Class Representative

orders and judgments entered in connection with the Agreement, and the Parties and their counsel submit to the jurisdiction of the Court for these purposes. In the event judicial intervention or enforcement is necessary, the prevailing Party shall be entitled to an award or attorneys' fees, costs, and interest.

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92. Invalidity of Any Provision. The Parties request before declaring any provision of this Agreement invalid, the Court first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents.

THE PARTIES SO AGREE:

Date: 8/10/2021, 2021

Plaintiff/Class Representative

By: [signature]

Julio Ochoa, Plaintiff Class Representative

Date: 9/28/2021, 2021

SPEECH AND LANGUAGE DEVELOPMENT CENTER, INC.

By: [signature]

Adrienne Kessler, CEO

Date: 9/28/, 2021

BROWNING|HOCKER

By: [signature]

William Browning

Attorneys for Defendant

Date: August 10, 2021

LEBE LAW, APLC

By: [signature]

Jonathan M. Lebe

Attorneys for Plaintiff / Class Representative

Date: August 10, 2021

COHELAN KHOURY & SINGER

By: [signature]

Jeff Geraci

Attorneys for Plaintiff / Class Representative

COHELAN KHOURY & SINGER
Article I. 605 C Street, Suite 200
San Diego, CA 92101

EXHIBIT A

Superior Court of California, County of Orange

Ochoa vs. Speech and Language Development Center, Inc.

Case No. 30-2020-01143577-CU-OE-CXC

NOTICE OF CLASS ACTION SETTLEMENT

To: All non-exempt employees of Speech and Language Development Center, Inc., ("SLDC") in California at any time from April 6, 2016 through March 13, 2020

A court authorized this Notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.

If you are a Class Member, as described above, you are eligible for a payment from the Class Action Settlement. You do not need to return a claim form.

PLEASE READ THIS NOTICE CAREFULLY

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive your Settlement Payment, you do not have to do anything. Your check will be automatically mailed to you after the Court grants final approval of the Settlement. The amount of your Settlement Payment is shown on page 9 of this Notice. **NOTE**: **You must keep a current address on file with the Settlement Administrator to ensure receipt of your check**.
UPDATE YOUR ADDRESS	Update your personal information with the Settlement Administrator to make sure your Settlement Payment is sent to the correct address. (A Change of Address Form and return envelope are enclosed with this Notice.)
EXCLUDE YOURSELF ("Opt Out")	If you do not wish to participate in the Settlement, you can exclude yourself from the Settlement (that is, to opt out) and retain all rights you may have against SLDC for the Class Claims. However, PAGA does not allow individuals to opt out, so if you opt out, you will still receive your share of the PAGA Payment, and release your PAGA claims.
OBJECT	Write to the Court if you think the Settlement is not fair. You may speak in Court about why you think the Settlement is not fair. **NOTE**: If you ask to exclude yourself from the Settlement, you cannot also object.

- **THIS NOTICE EXPLAINS YOUR RIGHTS AND THE DEADLINES TO EXERCISE THEM**
- **DEFENDANT SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE AGAINST ANY CLASS MEMBER FOR EXERCISING THE RIGHTS DESCRIBED IN THIS NOTICE**

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

THE TERMS OF THE SETTLEMENT

HOW TO GET A PAYMENT

EXCLUDING YOURSELF FROM THE SETTLEMENT

OBJECTING TO THE SETTLEMENT

THE COURT'S FINAL FAIRNESS HEARING

GETTING MORE INFORMATION

BASIC INFORMATION

1. Why did I get this Notice?

A proposed settlement of a class action lawsuit was reached between Plaintiff Julio Ochoa and Speech and Language Development Center, Inc. ("SLDC") The Court in charge of this case granted preliminary approval of the Settlement. You received this Notice because you may be a member of the Class, defined as all persons employed by SLDC in California as non-exempt employees any time from April 6, 2016 to March 13, 2020.

This Notice explains the settlement of the class action lawsuit, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this Action about?

The lawsuit is *Ochoa v. Speech and Language Development, Inc.* Case No. 30-2020-01143577-CU-OE-CXC, Superior Court of the State of California, County of Orange. (the "Action"). The Action alleges SDLC did not provide Class Members all wages, rest and meal breaks, all of which caused inaccurate wage statements, and violations of the Private Attorneys General Act ("PAGA").

SLDC denies all allegations in the Action and contends it complied with California law at all times. Due to the COVID-19 Pandemic, SLDC was shut down by State order on March 13, 2020. Before it re-opened, it received Plaintiff's notice of alleged violations and took steps to correct the alleged causes of the violations. The Settlement is not an admission of any wrongdoing by SLDC or an indication any law was violated.

3. Who are the Parties in this Action and the Proposed Class Members?

Speech and Language Development Center, Inc. (SLDC), a California Corporation, is the Defendant.

Plaintiff Julio Ochoa was employed in California by SLDC as a non-exempt Bus Aid in the Transportation Department from August 2012 to March 2020.

Class Members are defined as all non-exempt employees of SLDC in California at any time from April 6, 2016 through March 13, 2020. There are an estimated 220 members of the Class.

PAGA Members, a subgroup of the Class, are defined as all non-exempt employees of SLDC in California at any time from April 6, 2019 through March 13, 2020. There are an estimated 125 PAGA Members.

4. Why is this a Class Action?

In a class action, one or more people called Class Representatives (in this case, Julio Ochoa) sue on behalf of themselves and other people who they allege have similar claims. This group of people is called a "class." Each person receiving this notice is a "Class Member" for purposes of this Settlement.

5. Who are the attorneys for the Plaintiff and the Class?

COHELAN KHOURY & SINGER
Michael D. Singer / Jeff Geraci
605 "C" Street, Suite 200
San Diego, California 92101-5305
Telephone: (619) 595-3001

LEBE LAW, APLC
Jonathan M. Lebe/Zachary Gershman
777 S. Alameda Street, Second Floor
Los Angeles, California 90021
Telephone: (213) 358-7046

6. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or SLDC. There was no trial. Both sides agreed to settle the Action to avoid the cost and risks of a trial, and ensure Class Members get compensation from the Settlement.

THE TERMS OF THE SETTLEMENT

7. What is the Settlement Amount?

Defendant agreed to pay $750,000 (the "Gross Settlement Amount"). The Gross Settlement Amount includes all Settlement payments to Class Members and, subject to Court approval: (a) Settlement Administration Expenses not to exceed $6,000, (b) Class Representative Service Payment up to $5,000 to compensate Plaintiff for services undertaken on behalf of the Class, (c) Class Counsel Fees up to $250,000, (d) Class Counsel Litigation Expenses up to $12,500, (e) up to $25,000 for civil penalties - $18,750 (75%) paid to California's Labor Workforce and Development Agency ("LWDA Payment"); and, $6,250 (25%) paid to Class Members who worked from April 6, 2019 to March 13, 2020.

The exact amount of the attorneys' fees, litigation costs, Class Representative Service Payment, and Settlement administration expenses will be determined by the Court at the Final Approval hearing. The remaining portion of the Settlement, the "Net Settlement," estimated at $451,500, will be apportioned and paid to Class Members who do not request to be excluded from the Settlement, ("Participating Class Members"). **Claim forms are not required.** Participating Class Members will receive a proportionate share of the Net Settlement Amount based on the number of Workweeks worked from April 6, 2016 to March 13, 2020. PAGA Members will receive a proportionate share of the $6,250 (25% of $25,000) PAGA Payment based on the number of pay periods worked from April 6, 2019 to March 13, 2020.

8. How much will my Individual Settlement Payment be?

The estimated amount of your Settlement Payment is shown on the Employment Information Sheet (Page 9). This is an estimate. The actual amount may be more or less depending on whether other Class Members opt out of the Settlement and how much the Court approves in attorneys' fees, litigation expenses, and other costs.

HOW TO GET A PAYMENT

9. How can I get my Individual Settlement Payment?

If you do nothing, you will automatically receive your Individual Settlement Payment if the Court approves the Settlement. You must, however, notify the Settlement Administrator of any change in your name or mailing address if the name, or address to which this Notice was mailed, is not correct. **It is your responsibility to keep the Settlement Administrator informed of any change in your mailing address. Your Settlement Payment will be mailed to the last known address it has on file for you.** You may call the Settlement Administrator at 1-8xx-xxx-xxxx. You may also contact attorneys for the Class. (See Paragraph 5).

10. What do I do if I think my information or Number of Work Weeks is wrong?

The amount of your Settlement Payment is based on the number of Workweeks you worked from April 6, 2016 to March 13, 2020. If you are a PAGA Member, your share of penalties will be based on the number of Pay Periods you worked from April 6, 2019 to March 13, 2020. The number of Workweeks and Pay Periods shown on the Employment Information Sheet (on page 9), was obtained from SLDC's records. If you dispute the information your Settlement Payment is based on, you must return a written statement of the reasons you believe it is not correct, with any supporting documents you have, to the Settlement Administrator no later than

_____________, 2022 [forty-five (45) days after the mailing of the Class Notice]. You should include any documents or other information supporting your belief the information in the Employment Information Sheet is not correct. Your written dispute should be signed by you, and include the case name, and case number, *Ochoa v. Speech and Language Development Center,* Case No. 30-2020-011443577-CU-OE-CXC. The Settlement Administrator will resolve disputes about the number of Workweeks based on SLDC's records, and any information you provide, subject to review by the Court.

11. <u>When can I expect to receive my Individual Settlement Payment?</u>

If you do not exclude yourself from the Settlement, and there are no objections submitted, your share of the Settlement will be mailed to you about 30 days after the Court grants final approval of the Settlement and enters judgment. ***Your share of the Settlement will be mailed to the address the Administrator has on file for you, which is the address where this Notice was mailed.*** If this address is not right, or if you move after you receive this Notice, you must inform the Settlement Administrator.

The Individual Settlement Payment will be characterized as 10% wages for which an IRS W-2 Form will be issued, and 45% penalties and 45% interest for which IRS 1099 Forms will be issued. Nothing in this Notice is advice about taxes or taxability. Each Participating Class Member may want to consult a tax advisor about the consequence of the Settlement payments.

12. <u>What am I giving up to get an Individual Settlement Payment?</u>

After the Court approves the Settlement, unless you exclude yourself, you are staying in the Class and can't sue, continue to sue, or be part of any other lawsuit against Defendants concerning the legal issues in this Action. You will be bound by the judgment in this Action and you will "give up" or release these claims:

<u>Released Claims</u>: As of the date the Judgment becomes Final, all Participating Class Members will fully and finally release Defendant and the Released Parties from all claims or causes of action of any kind alleged in the Complaint, for (1) failure to pay minimum, regular, and overtime wages, (2) rest period violations, (3) meal period violations, (4) inaccurate wage statement violations, (5) failure to pay final wages, and (6) unfair business practices. The release of these claims shall be effective for the Class Period, from April 6, 2016 through July 19, 2021 ("Released Class Claims"). PAGA Members will release claims for PAGA civil penalties for failure to provide all wages, meal periods, rest periods, accurate wage statements, and final wages from April 6, 2019 to July 19, 2021, ("PAGA Period") whether or not they submit a Request for Exclusion.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. <u>How do I get out of the Settlement?</u>

If you do not want to participate in the Settlement for any reason, you may request to be excluded from the Settlement ("to opt out"). **If you opt out, you will not receive a Settlement Share payment**, and you will not be bound by the terms of the Settlement.

To opt out, you must return a written, signed and dated request, postmarked no later than ______________, 2022 [sixty (60) days after the date of the Notice] to the Settlement Administrator:

Speech and Language Development Center Class Action Settlement Administrator
c/o .
P.O. BOX ____
Costa Mesa, California 9_____

The opt-out request must state in substance: "I want to be excluded from the Class in the *Ochoa v. Speech and Language Development Center* lawsuit, Case No. 30-2020-01143577-CU-OE-CXC. I understand by asking to be excluded, I will not receive a Settlement Share payment from the Settlement." The request must state your full name, address, telephone number, last four digits of your social security number for verification purposes, the approximate dates you worked for Defendant in California, and it must be signed by you.

Opt out requests postmarked after _______________, 2022 or that are incomplete or unsigned will be rejected, and you will remain bound by the Settlement, the Released Class Claims, and you will receive your Settlement Share payments.

If you Opt Out of the Settlement, and worked anytime from April 6, 2019 through March 13, 2020, you will still receive a share of PAGA Penalties based on the number of Pay Period worked during that time, and will release PAGA claims.

14. If I don't opt out of the Settlement, can I sue SLDC for the same thing later?

No. Unless you exclude yourself from this Action, you give up any right to sue SLDC for the claims settled in this Lawsuit. ***If you have a claim or lawsuit already against SLDC, speak to your lawyer in that case immediately***. You must ask to exclude yourself from the Settlement, Opt Out, to continue your own lawsuit.

15. If I opt out, can I get money from this Settlement?

No. If you Opt Out of the settlement, you will not receive an Individual Settlement Payment. Your payment will go to Participating Class Members. But you may receive a share of the PAGA Penalties if you worked between April 6, 2019 and March 13, 2020.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I don't like the Settlement?

If you have not returned an opt out request and believe the Settlement should not be finally approved by the Court, you may object to any Settlement term either in writing or in person. All written objections must state your name, current address, telephone number, dates of employment in California by Defendant, the reason(s) for the objection, and the name and number of the case, *Ochoa vs. Speech and Language Development Center, Inc.*, Case No. 30-2020-01143577-CU-OE-CXC. Include any documents to which support your objection. The written objection must be mailed to the Administrator on or before ___________, 2022 *[45 days of the initial mailing]*. The Administrator's mailing address and toll-free number are shown on the last page of this Notice.

You, or a lawyer at your expense, may also appear in person to discuss any objection with the Court, even if you have not submitted a written objection. The Final Approval Hearing is set for __________, 2022 at ____ a.m. in Dept. C16 of the Superior Court of California, County of Orange to discuss your objections with the Court. The Court is located at 700 W. Civic Center Drive, Santa Ana, California 92702.

If you wish to preserve your right to appeal if your valid objection is denied, you, or a lawyer on your behalf, must file formal papers with the Court intervening in the Action, before a final judgment is entered.

17. What's the difference between objecting and opting out of the Settlement?

Objecting is telling the Court you don't like something about the Settlement. You may object only if you stay in the Class. Requesting to be excluded, opting out, is telling the Court you don't want to be part of the Class or the Settlement. If you opt out, you have no basis to object because the case no longer affects you.

If you remain in the Class and object to the Settlement, the Court will consider your objections when deciding whether to grant final approval to the Settlement. If you have submitted a timely written objection, you do not need to appear to discuss the objection with the Court.

THE COURT'S FINAL FAIRNESS HEARING

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

The Court will hold a Final Approval Hearing in Department C16 of the Superior Court of California, County of Orange, located at 700 W. Civic Center Drive, Santa Ana, California 92702 on __________, 2022 at ____a.m. The Court will determine whether the Settlement is fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and reimbursement of litigation costs, the Class Representative Service payment, and the Settlement Administrator's fees and expenses.

The Court may reschedule the Final Approval Hearing without further notice to Class Members. However, any Class Member who has submitted a written objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Approval hearing. Should the Court grant Final Approval of the Settlement and Enter Judgment, the Court's Order approving the Settlement and the Judgment may be viewed on the Administrator's website, www.____________________.com.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. If you send an objection, you do not need to come to Court. If you mailed a written objection (Paragraph 16), the Court will consider it. You or your own lawyer, at your own expense, may also come to the hearing and discuss your objections with the Court.

20. May I appear and speak at the hearing?

Yes, but you cannot speak at the hearing if you have opted out of the Settlement.

GETTING MORE INFORMATION

21. Who can I contact if I have questions about the Settlement?

This Notice is only a summary of the case and the Settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any of the papers filed in the Action, at the Filing Department of the Superior Court of California, County of Orange located at 700 W. Civic Center Drive, Santa Ana, California, 92702 during regular Court hours.

You may also examine case records on the Court's website, https://civilwebshopping.occourts.org/Search.do#searchAnchor, by clicking on "Online Services," "Case Access," "Civil Case & Documents Access." Once you've read the Court's "Information Disclaimer" and clicked "Accept Terms," type case number "01143577" and year field "2020," confirm you are not a robot and click "search." The documents filed in this case are listed in the Register of Actions, many may be available to view at a minimal charge.

You may also contact the attorneys for the Plaintiff and the Class at the contact information listed above in Paragraph 5 if you have any questions about the Settlement. You may also contact the Settlement Administrator by calling toll free at ______ or by writing to the Administrator at the address in Paragraph 13.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR THE DEFENDANT, ITS SUPERVISORS, OR ATTORNEYS ABOUT THIS SETTLEMENT

ADDITIONAL IMPORTANT INFORMATION

A. **SLDC supports the Settlement** and will not retaliate in any manner against any Class Member who stays in the Class and receives an Individual Settlement Payment or requests to opt out of the Settlement.

B. **It is your responsibility to ensure the Settlement Administrator** has your current mailing address and telephone number on file. This will be the address Individual Settlement Payment checks will be mailed.

C. **Settlement Payment checks <u>must be cashed</u> soon after receipt**. Checks not cashed after 180 days of the date of issuance will be forwarded to California's State Controller, Unclaimed Property Division for further handling on behalf of the Class Member whose check was voided. If your check is lost or misplaced, immediately contact the Settlement Administrator and request a replacement.

D. **Administrator's Address and Toll-Free Number**

> Speech and Language Development Center Class Action Administrator
> c/o ____________
> P. O. Box ________,
> ______, CA 9___
> Toll free: ( ) __________

Superior Court of California, County of Orange
Ochoa vs. Speech and Language Development Center, Inc.
Case No. 30-2020-01143577-CU-OE-CXC

EMPLOYMENT INFORMATION SHEET

Class Member's Address on File with the Settlement Administrator:

Name: ________________________

Address: ____________________

City, State, Zip Code: ________________________

- The number of Workweeks you worked from April 6, 2016 through March 13, 2020, according to SLDC's records is __________.

- The number of Pay Periods you worked from April 6, 2019 through March 13, 2020, according to SLDC's records is __________.

Based on the information above, it is estimated that if you do not opt out of the Settlement, you will receive an estimated **$_________**, less applicable payroll taxes. The amount shown is an estimate. The actual amount you receive may be more or less than the estimate shown.

You do not have to take any action to receive your share of the Settlement. Your share of the Settlement will be mailed to you at the address shown above.

If your address has changed, or is different than the address shown above, you must notify the Settlement Administrator by returning the enclosed Change of Address Form to receive your Settlement Payment. You may also contact attorneys for Plaintiff and the Class, Cohelan Khoury & Singer at (619) 595-3001.

Please Note: On receipt of your Settlement Payment, it is highly recommended that it be deposited or cashed without delay. The check will be voided after 180 days and funds represented by uncashed checks will be forwarded to California's Secretary of State, Controller, Unclaimed Property Division for further handling.

EXHIBIT B

Superior Court of California, County of Orange
Ochoa vs. Speech and Language Development Center, Inc.
Case No. 30-2020-01143577-CU-OE-CXC

CHANGE OF ADDRESS FORM

I want to change my name or mailing address or other contact information to the following:

Name:____

Former Name (if applicable):____________________________

Street and Apt. No., if any:_____________________________

City, State, and Zip Code:_______________________________

Telephone(s): (Home):________________; (Cell):___________

Email:____

I understand all future correspondence in this Action, including important notices or Settlement Payments, will be sent to the address listed above and not to the address I previously used. I request the use of the address listed above for these purposes.

Submitted by:

DATED: ____________, 2021

Print Name: ___________________________

Signature: ___________________________

PLEASE RETURN THIS FORM IN THE ENVELOPE PROVIDED OR VIA UNITED STATES FIRST-CLASS MAIL TO:

Speech and Language Development Center Class Action Administrator
c/o _____
P. O. Box ______
Costa Mesa, CA 9___,

EXHIBIT C

Lebe Law
A PROFESSIONAL LAW CORPORATION

(213) 358-7046 (310) 820-1258 jon@lebelaw.com 777 S. Alameda Street, 2nd Floor, Los Angeles, CA 90021

May 13, 2020

Notice Via Online Submission and Fee Via Certified Mail

Department of Industrial Relations, Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
https://dir.tfaforms.net/128

Re: Notice by Julio Ochoa, on behalf of himself and all similarly-situated aggrieved California employees of Speech and Language Development Center, Inc., as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator:

Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698, et seq. ("PAGA"), Julio Ochoa ("Mr. Ochoa" or "Claimant") intends to bring a civil action against her former employer, Speech and Language Development Center, Inc. ("Defendant" or "Speech and Language Development Center"), individually and on behalf of all other similarly-aggrieved employees. This letter serves as Claimant's written notice pursuant to Labor Code section 2699.3(a)(1)(A) providing the Labor and Workforce Development Agency (hereafter "LWDA") the opportunity to investigate the alleged claims contained herein.

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative civil action for PAGA penalties on behalf of himself and all other aggrieved employees of the Defendant, and shall seek civil penalties under the PAGA on behalf of himself and all other aggrieved employees in the State of California. A copy of this notice is being sent to Defendant by certified mail at the address below.

FACTUAL STATEMENT

Speech and Language Development Center is a special education school based out of Buena Park, California. Mr. Ochoa has worked as a non-exempt employee for Speech and Language Development Center from approximately August of 2012 until the present. At all times during his employment and at least one year prior to the date of this notice, Defendant failed to pay all overtime wages for all overtime hours worked because it failed to properly calculate the regular rate of pay for purposes of calculating overtime and double-time rates. Claimant and other aggrieved employees were paid different hourly rates when they worked for different departments within Defendant's school but were paid overtime and double-time based on the lower hourly rates. However, this additional renumeration was not properly calculated into the regular rate of pay, and as a result the overtime and double-time wages were not calculated using the correct regular rate of pay. Accordingly, Defendant failed to pay all overtime wages.

Additionally, Defendant has subjected Claimant and other aggrieved employees to a uniform policy and practice of unlawful time rounding and manipulation. That is, Defendant rounded his and other aggrieved employees' hours worked to the nearest quarter of an hour, or otherwise manipulated the reported hours, which over time, unlawfully favored Defendant and resulted in time loss to the employees, including Claimant. This rounding policy was not neutral on its face or in application and resulted in cumulative loss of time to the employees.

Defendant had the ability to pay for the precise hours worked but opted instead to utilize the rounding policy with no apparent benefit other than to benefit Defendant and deprive employees of payment for all hours worked. As a result, Claimant and other employees were not paid all minimum and regular wages for all hours worked. When the employees worked overtime, the rounding policy and time manipulation policy also resulted in the failure to pay all overtime hours worked.

Defendant also failed to provide meal periods for each five hours of work to its employees, including Claimant. Often, when Claimant was provided an opportunity to take a meal period, it was after his fifth hour of work, or he was not provided a full thirty-minute, off-duty meal period. Defendant also failed to pay an additional hour's worth of premium pay on each occasion that it failed to provide lawful meal periods as required by law.

Additionally, Defendant failed to authorize or permit ten-minute rest periods for every four hours or major fraction thereof worked. Claimant and other aggrieved employees were not authorized to take their rest periods completely relieved of duty at the appropriate time intervals. Defendant also failed to pay an additional hour's worth of premium pay on each occasion that it failed to provide lawful rest periods as required by law.

Claimant further alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other current and former non-exempt employees of Defendant.

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FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Defendant failed to pay all minimum, regular, and overtime wages by law.

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to the employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to an entity."

Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Pursuant to the "Minimum Wages" and "Hours & Days of Work" Section of the applicable IWC Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked, and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

As set forth in detail above, Defendant violated Labor code sections 510, 1197, 1194, 1198, and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.2, 510, 1194, 1195.5, and 1198, and the "Hours and Days of Work" Section of the Applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . .." Labor Code section 226.7(a) states that "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

The “Rest Period” Section of applicable IWC Wage Order states, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of reach workday that the rest period is not provided.

As set forth above, Defendant failed to provide Claimant and other aggrieved employees with off-duty meal periods and duty-free rest periods as required by Labor Code sections 226. 7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. Furthermore, Defendant failed to pay one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.”

Claimant intends to pursue remedies pursuant to the PAGA for the alleged violations on behalf of himself and all other aggrieved employees in the state of California.

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS

(Labor Code § 226 and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (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 him 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 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 ($50.00) for the initial pay period in which a violation occurs and one hundred dollars ($100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000.00), and is entitled to an award of costs and reasonable attorney's fees."

Defendant failed to provide Claimant and other current and former employees with accurate, timely, itemized wage statements complying with the requirements of the Labor Code and applicable IWC Wage Order. Furthermore, Claimant's wage statements did not include the correct number of hours worked and wages earned. Claimant intends to pursue remedies pursuant to the PAGA for the alleged violation on behalf of himself and all other aggrieved employees in the state of California.

FAILURE TO TIMELY PAY WAGES DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699, and the "Minimum Wages" Section of the Applicable Wage Order)

Labor Code section 204(a) states, in pertinent part, "All wages ... earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the Employer as the regular paydays." The "Minimum Wages" Section of the applicable Wage Order further states "every Employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

Labor Code section 201 states: "If an Employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

Labor Code section 203(a) states, in relevant part: "If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or himself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment."

Labor Code section 256 states: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203."

As detailed above, Defendant failed to timely pay its employees all wages due and owing during and upon termination of employment. Defendant willfully failed to pay all wages when required by Sections 201 and 202 of the Labor Code. Therefore, Defendant owes penalties to all affected employees. Claimant intends to pursue remedies pursuant to the PAGA for the alleged violations on behalf of all other aggrieved employees in the state of California.

CIVIL PENALTIES FOR VIOLATION OF LABOR CODE AND IWC WAGE ORDERS

(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any Employer or other person acting on behalf of an Employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of $50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and $100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: "Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation."

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to an employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of $100 for the initial violation for each pay period in which an employee was underpaid in addition to an amount sufficient to recover underpaid wages, and $250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, Defendant violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, Defendant is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages, and penalties to the extent allowed by law.

DUTIES OF EMPLOYER

(Labor Code§§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every Employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. Employers violated this requirement by their failure to accurately record employee hours worked and/or paid. Labor Code section 1174.5 imposes a civil penalty of $500 for an Employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

Defendant failed to maintain accurate records regarding the hours worked and wages earned as required by law. Defendant further failed to maintain and provide accurate wage statements. Claimant will pursue all remedies on behalf of himself and other current and former employees, including recovery of attorney's fees, costs, damages, and penalties to the extent allowed by law.

<u>ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES</u>

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, 2699, et seq., and 2802)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, et seq. give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, et seq., aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, Defendant is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of Defendant's unlawful actions.

<u>CONCLUSION</u>

Mr. Ochoa requests the LWDA initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Mr. Ochoa will pursue claims for statutory penalties and will seek all remedies available for violations of the Labor Code and the applicable Industrial Welfare Commission Wage Order, including all available penalties set forth in Labor Code section 2699(f).

Sincerely,

Jonathan M. Lebe, Esq.
Attorney for Julio Ochoa,
Individually and on behalf of Aggrieved Employees

Copied by Certified Mail:

Adrienne Kessler
Speech and Language Development Center, Inc.
8699 Holder Street
Buena Park, CA 90620

Copied by E-Mail:

Michael Singer
msinger@ckslaw.com
Jeff Geraci
Jgeraci@ckslaw.com
Cohelan Khoury & Singer
605 C Street, Suite 200
San Diego, CA 92101

William K. Browning
wbrowning@browninghocker.com
Browning|Hocker
501 W. Broadway, Suite 540
San Diego, CA 92101

EXHIBIT 2