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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

LUIS DE JESUS, an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

vs.

GUARDIAN ANGEL HOME CARE, INC., a  
Michigan Corporation; SAM D. KASSAB; an  
individual, and DOES 2-50, Inclusive;

Defendants.

Case No. 37-2020-00021049-CU-OE-CTL

**DECLARATION OF JEAN-CLAUDE  
LAPUYADE, ESQ. IN SUPPORT OF  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Date: June 24, 2022

Time: 8:30 a.m.

Judge: Hon. Ronald F. Frazier

Dept.: 65

1 I, Jean-Claude Lapuyade, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently  
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner  
4 of the law firm of JCL LAW FIRM, APC (hereinafter "Class Counsel"). I am counsel of record for  
5 Plaintiff LUIS DE JESUS, (hereafter "Plaintiff") in this wage and hour class action filed against  
6 GUARDIAN ANGEL HOME CARE, INC. (hereinafter "Defendant").

7 2. This declaration is being submitted in support of Plaintiff's Motion for Final Approval of  
8 Class and PAGA Action Settlement.

9 3. Attached hereto as **Exhibit "A"** are true and correct copies of the fully executed  
10 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (hereinafter  
11 "Agreement").

12 4. Attached hereto as **Exhibit "B"** is a true and correct copy of the conformed December  
13 22, 2021, Preliminary Approval Order.

14 5. Attached hereto as **Exhibit "C"** is a true and correct copy of the November 8, 2021, proof  
15 of filing the proposed Settlement with the LWDA.

16 6. Attached hereto as **Exhibit "D"** is true and correct copy of the June 1, 2022, proof of  
17 filing this motion seeking final approval of this Settlement.

18 **I. INTRODUCTION**

19 7. An objective evaluation of the proposed settlement of \$1,000,000 ("Total Settlement  
20 Amount") confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable.  
21 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between  
22 experienced counsel, guided by the wisdom and experience of Steven Rottman, Esq., an experienced  
23 wage and hour class and PAGA action mediator. After deducting any Court-approved attorneys' fees  
24 and costs, class representative incentive payments, administration costs, and payments to the Labor &  
25 Workforce Development Agency ("LWDA"), the Net Settlement Amount shall be distributed to the  
26 Settlement Class Members based on the number of Workweeks they worked while employed by  
27 Defendant during the Class Period. *The Settlement Class greeted news of the Settlement with*

1 **overwhelming approval as 100% of the Settlement Class chose to participate in the Settlement**. There  
2 are zero opt-outs and zero objections to the Settlement. The unanimous approval by the Settlement  
3 Class evidences the clear fairness and reasonableness of the Settlement.

4 8. This Settlement provides substantial recovery for Defendant's alleged wage and hour  
5 violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount  
6 of approximately \$581,667.00. This will result in an average Individual Settlement Payment of  
7 **\$1,499.14** and high payment of **\$5,966.68**.

8 9. The relief offered by the Settlement is immediate and is particularly impressive when  
9 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*  
10 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait  
11 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain  
12 litigation.

13 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement  
14 approval under California law and falls well within the range of reasonableness. Accordingly, Class  
15 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement  
16 and, entry of the proposed Final Approval Order and Judgment.

## 17 **II. OVERVIEW OF THE LITIGATION**

18 11. Defendant provides a wide range of home health care services in eleven different  
19 locations throughout California. This action asserts claims on behalf of Defendant's employees  
20 working in California who are paid on a piece-rate basis. Plaintiff was employed by Defendant as a  
21 non-exempt employee from January 2019 to February 2020. At all times during his employment,  
22 Plaintiff was paid on a piece-rate basis and was entitled to legally compliant meal and/or rest periods,  
23 and minimum, regular, and overtime wages for all hours worked. Throughout his employment, Plaintiff  
24 was subject to Defendant's written policies and procedures contained in, among other documents, the  
25 "Employee Handbook."

26 12. Generally, Plaintiff claims that Defendant failed to pay for all time worked, including  
27 overtime, failed to provide compliant meal and rest periods, failed to pay separate compensation for  
28

1 rest breaks, failed to furnish accurate itemized wage statements, failed to pay waiting time penalties,  
2 failed to reimburse for required business expenses, and failed to pay sick time. Defendant forcefully  
3 denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all  
4 applicable employment laws and raised several other significant defenses to Plaintiff's claims, including  
5 but not limited to, facially compliant meal and rest period policies, compliant overtime policies,  
6 compliant reimbursement policies, compliant wage statements, and compliant sick pay policies.

7 13. On June 19, 2020, Plaintiff served Defendant and the Labor and Workforce Development  
8 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth  
9 the facts and theories supporting Defendant's alleged violations of various provisions of the California  
10 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to  
11 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections  
12 2698 et seq ("PAGA").

13 14. On June 18, 2020, Plaintiff filed a class and representative action complaint in the San  
14 Diego Superior Court, Case Number 37-2020-00021049-CU-OE-CTL ("Class Action"). The Class  
15 Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of  
16 California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation  
17 of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation  
18 of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of  
19 Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab.  
20 Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal.  
21 Lab. Code §226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202  
22 and 203; and (8) Failure to Reimburse Employees for Required Business Expenses in Violation of Cal.  
23 Lab. Code §§ 2802 ("Class Claims").

24 15. On August 27, 2020, Plaintiff served the LWDA with an amended PAGA Notice,  
25 informing the LWDA, Defendant, and Sam D. Kassab that Plaintiff identified Doe 1 as Sam D. Kassab,  
26 who acted as Plaintiff's joint employer. On February 8, 2021, Plaintiff served the LWDA with a second  
27 amended PAGA Notice, setting forth the facts and theories supporting Defendant's additional violation  
28

1 of Cal. Lab. Code § 246 by failing to issue Plaintiff and the Aggrieved Employees with itemized wage  
2 statements that set forth the amount of paid sick leave available, or paid time off leave an employer  
3 provides in lieu of sick leave. On March 24, 2021, Plaintiff filed a First Amended Complaint, alleging  
4 additional causes of action for: (1) Violations of the Private Attorneys General Act at Labor Code §§  
5 2698, *et seq.*; and (2) Unpaid Sick Pay and Failure to Provide Sick Leave Balance in Violation of Cal.  
6 Lab. Code §§ 246, *et seq.*

7 16. The Parties agreed to collectively mediate the Class Action relatively early in the  
8 litigation. Prior to mediation, the Parties engaged in investigation and the exchange of documents and  
9 information in connection with the Action. To prepare for mediation, the Parties agreed to informally  
10 produce additional documents and data points subject to the mediation privilege, including but not  
11 limited to, the Class Members' time data and certain payroll data points. As discussed *infra*, Plaintiff's  
12 counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants'  
13 time and payroll data.

14 17. On August 2, 2021, the Parties participated in a full day mediation presided over by  
15 Steven Rottman, Esq., an experienced wage and hour class and PAGA action mediator. The mediation  
16 concluded without an agreement to settle the Action. However, mediator Rottman made a mediator  
17 proposal that was subsequently accepted by all Parties. The basic terms were set forth in a signed  
18 Memorandum of Understanding ("MOU"). After reaching an agreement in principle, the Parties drafted  
19 and negotiated a long-form settlement agreement, which is the subject of the instant motion.

20 18. The Court preliminarily approved a Total Settlement Amount of \$1,000,000. The Total  
21 Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class  
22 Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA  
23 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

24 19. After this Court granted preliminary approval, it was discovered that the number of  
25 workweeks was greater than 110% of the estimate provided in the Agreement, triggering the claw back  
26 provision in the Agreement, and adjusting the end date of the Class Period from August 2, 2021, to May  
27 2, 2019. Agreement at ¶ C(1)(b).

1           20.     As explained in further detail below, the Settlement is fair, adequate, and reasonable to  
2 the class and should be granted final approval. This is evidenced by the unanimous approval of the  
3 Settlement by the Settlement Class and absence of any objections to the Settlement.

4           21.     Further supporting final approval, the average Individual Settlement Payment of  
5 \$1,499.14 is comparable to settlement payments in similar wage and hour class actions. This result is  
6 particularly favorable considering that liability and certification were far from certain. Given the  
7 complexities of this case, the defenses asserted, the uncertainty of class certification, along with the  
8 uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and  
9 should be granted final approval.

#### 10                   **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

##### 11       **A.     Adequate Investigation**

12           22.     Months before filing the Action, Class Counsel began its pre-filing investigation into the  
13 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with  
14 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,  
15 including portions of Defendant's handbooks, compensation policies and time and payroll records. At  
16 the conclusion of the interviews, Class Counsel determined that each of Plaintiff's complaints justified  
17 further inquiry.

18           23.     Class Counsel subsequently requested Plaintiff's employee file from Defendant. In  
19 response, Defendant produced hundreds of pages of documents, including but not limited, copies of  
20 Plaintiff's hiring documents, payroll and time records, performance reviews, and separation documents.  
21 Class Counsel reviewed and analyzed the documents and determined the documents appeared to  
22 substantiate Plaintiff's claims that Defendant failed to, among other things, pay for all time worked,  
23 reimburse for required expenses, furnish accurate itemized wage statements, and to provide compliant  
24 meal and rest periods.

25           24.     Additionally, during the pre-litigation meetings with Class Counsel, Plaintiff provided  
26 the names and contact information for several Class Members. During the litigation, as result of  
27 Plaintiff's informal discovery requests, Defendant produced the names and contact information for the

1 Class Members. During the litigation, Class Counsel interviewed several Class Members to further  
2 investigate the allegations asserted in the Action.

3 25. Considering the many anticipated factual disputes, the Parties agreed, relatively early in  
4 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for  
5 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and  
6 Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant  
7 produced the time records for the Class Members, aggregate workweek and pay period data for the  
8 Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class  
9 Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*,  
10 compensation, timekeeping and meal and rest period policies. In total, Defendant produced hundreds  
11 of pages of pertinent policy documents including time and payroll data for Class Counsel to analyze.

12 26. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class  
13 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services  
14 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed  
15 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated  
16 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

17 27. BCG analyzed Defendant's time and payroll data to assist in the development of various  
18 damage models. Among other things, BCG determined the approximate number of work shifts,  
19 workweeks, pay periods, average length of shift and average number of hours worked per week and pay  
20 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and  
21 rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the  
22 amount of unpaid wages due to off-the-clock work during the Class Period.

23 28. In advance of mediation, Class Counsel created several damage models predicated on the  
24 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while  
25 accounting for the uncertainties of continued litigation. These damage models informed and guided  
26 Class Counsel during the mediated settlement discussions.

29. In addition to formal and informal discovery, witness interviews, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Here, Class Counsel's investigation uncovered *Chavez v. Adidas America, Inc.*, United States District Court, Northern District of California, Case Number 5:16-cv-6533 LHK a prior wage and hour class action against Defendant. In that case, Defendant resolved the class claims asserted on behalf of 3,700 class members (a number similar to class members covered by this Settlement) for the period between October 11, 2012 and September 15, 2017 for \$1.5 Million Dollars. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against.

30. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with several putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

31. Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement

1 **B. The Parties Settled Shortly After Mediation**

2 32. The Settlement is the product of a mediation session with a respected mediator and  
3 negotiations over the terms of the Settlement. Although the mediation concluded without a settlement,  
4 the Parties, represented by its respective counsel, were able to reach an agreement shortly after the  
5 mediation based on the mediator's proposal. The negotiations were adversarial, conducted at arm's  
6 length and tempered by the efforts of both sides to serve the interests of their clients. The amount of  
7 the service award was not negotiated until after the parties agreed to the Total Settlement Amount and  
8 many other terms.

9 **C. Class Counsel is Experienced in Similar Litigation**

10 33. Plaintiff is represented by competent and experienced counsel to pursue his claims. I  
11 established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing  
12 aggrieved employees and consumers throughout California in wage and hour class actions and complex  
13 multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade,  
14 Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney), Tesla Stone (Paralegal), Sydney Castillo-  
15 Johnson (Associate Attorney), Jennifer Hemming (Legal Secretary), and Sara Christensen (Legal  
16 Assistant).

17 34. I am qualified to represent the Plaintiff, the State of California, and the Aggrieved  
18 Employees. I have extensive experience with wage and hour class and representative actions litigation  
19 like this matter, and employment matters in general. Additionally, I have extensive complex mass tort  
20 litigation experience and complex construction product liability experience. I can, will and have  
21 adequately represented the interests of the Plaintiff, the State of California, and the Aggrieved  
22 Employees throughout this action.

23 35. I have represented consumers and employees in California class actions, and complex  
24 multi-party product liability actions exclusively for more than 14 years. I have been in practice as a  
25 plaintiffs' civil litigation attorney since April 2007.

26 36. I have significant class counsel and collective action counsel experience. I served as class  
27 and/or collective (PAGA) counsel in the following matters:

1 a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No.  
2 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar  
3 class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The  
4 Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA  
5 counsel for the State of California.

6 b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914  
7 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA  
8 settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC  
9 acted as class counsel for the settlement class and as representative PAGA counsel the  
10 State of California and the Aggrieved Employees.)

11 c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-  
12 CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million  
13 dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums  
14 and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

15 d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-  
16 20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and  
17 appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action  
18 settlement.)

19 e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No.  
20 CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and  
21 PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed  
22 the JCL Law Firm, APC as Class Counsel)

23 f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case  
24 No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson  
25 approved \$550 billing rate in a representative California Labor Code Private Attorney  
26 General Act settlement).

1 g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case  
2 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA  
3 settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as  
4 class counsel for the settlement class and as representative PAGA counsel the State of  
5 California and the Aggrieved Employees.)

6 h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior  
7 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a  
8 PAGA Settlement negotiated on behalf of the State of California and the aggrieved  
9 employees by the JCL Law Firm, APC.)

10 i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior  
11 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the  
12 JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for,  
13 *inter alia*, missed meal and rest periods.)

14 j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case  
15 No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA  
16 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC  
17 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

18 k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.  
19 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL  
20 Law Firm as Class Counsel and granted final approval of wage and hour class action for,  
21 *inter alia*, off-the-clock work.)

22 l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-  
23 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class  
24 Counsel and granted final approval of wage and hour class action for off-the-clock work.)

25 m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No.  
26 SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class  
27  
28

counsel and granted final approval of wage and hour class action for meal period violations.)

n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

u. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);

1 bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No.  
2 BC617160 (2017 - Certified and settled wage and hour class action.);

3 cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case  
4 No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);

5 dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-  
6 CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices  
7 arising out of Civil Code Section 1940.1);  
8

9 37. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a  
10 favorable verdict for the firm's clients.

11 38. Finally, I have published appellate experience in *William Blanchette et al., v. The*  
12 *Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

13 39. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers,  
14 Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers,  
15 Rising Star list recognizes the top 2.5% of eligible attorneys. (see  
16 [https://www.superlawyers.com/about/selection\\_process.html](https://www.superlawyers.com/about/selection_process.html).)

17 **D. Strength of Plaintiff's Case**

18 40. Here, the Settlement is clearly within the "ballpark" of reasonableness because the  
19 Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily  
20 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*,  
21 91 Cal.App.4th at 250. While the Total Settlement Amount of \$1,000,000 represents a discount on  
22 Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full  
23 amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable  
24 defenses raised by Defendant presented a risk that could award significantly less in damages than  
25 Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation,  
26 resulting in added fees and costs without any guarantee of recovery for the Class.  
27

1           41.     Although Class Counsel believe strongly in Plaintiff's claims, it would be misguided to  
2 ignore the asserted defenses. If successful on any one its defenses, Defendant could defense the action  
3 or at least, drastically undercut Plaintiff's claims.

4 **E.     Risks of Continued Litigation**

5           42.     With respect to the most immediate challenge, i.e., class certification, the risks attendant  
6 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*  
7 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded  
8 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed  
9 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*  
10 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*  
11 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor  
12 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th  
13 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly  
14 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176  
15 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to  
16 having taken meal and rest breaks demonstrated that individualized inquiries were required to show  
17 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following  
18 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack  
19 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
20 certification of driver meal and rest period claims based on the predominance of individual issues).  
21 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,  
22 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring  
23 settlement.

24           43.     Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless  
25 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or  
26 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can  
27 drastically affect the value of Plaintiff's claims and, in fact, already has. Recently, the California Court  
28

1 of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue  
2 the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security*  
3 *Services, Inc.*, 40 Cal.App.5th 444 (2019) (review granted). The *Naranjo* decision gutted Plaintiff's  
4 claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties  
5 predicated on rest period violations.

6 44. As demonstrated by the decisions in *Magadia*, supra, 999 F.3d 668 and *O'Conner v. Uber*  
7 *Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.4th  
8 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt  
9 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a  
10 bond and appeal. A post-judgment appeal by Defendant would have required many more years to  
11 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case  
12 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh  
13 an uncertain result three or more years in the future.

14 45. Class Representative and Class Counsel recognize the expense and length of a trial  
15 against Defendant through possible appeals which could take another three years. In arriving at their  
16 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the  
17 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful  
18 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in  
19 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have  
20 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an  
21 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial  
22 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative  
23 and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest  
24 of the Class, is fair, reasonable, and adequate, and should be granted final approval. With respect to the  
25 most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage  
26 and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d  
27 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an

1 employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in  
2 favor of the employer. (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087  
3 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National*  
4 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class  
5 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that  
6 employees might not take their breaks were predominantly individualized questions of fact not  
7 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming  
8 denial of certification because employees’ declarations attesting to having taken meal and rest breaks  
9 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*  
10 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification of  
11 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*  
12 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest  
13 period claims based on the predominance of individual issues.) Collectively, the examples cited above  
14 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification  
15 through a contested motion is a significant risk factor favoring settlement.

16 **F. The Total Settlement Amount is Fair and Reasonable**

17 46. The Total Settlement Amount of \$1,000,000 in this case is fair and well within the range  
18 of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement  
19 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the  
20 various potential impediments to recovery. Class Counsel developed varied economic damages models  
21 measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation.  
22 The various models were informed by Class Counsel’s investigation, including the analysis of a  
23 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval  
24 process, Class Counsel projected a range of Defendant’s liability exposure for the claims asserted on  
25 behalf of the Settlement Class. The Total Settlement Amount represents approximately between 15.7%  
26 and 19.3% of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of  
27 mediation.

1           47.     Clearly the goal of this litigation to obtain redress for the class has been met by this  
2 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations  
3 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final  
4 approval.

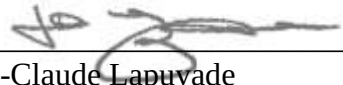
5                           **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

6           48.     Here, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of  
7 \$40,000 which is 4% of the Total Settlement Amount. This amount falls well within the range of  
8 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$30,000) will be  
9 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed  
10 to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and  
11 should be approved.

12           49.     Further, on November 8, 2021, Class Counsel gave the LWDA notice of this Settlement  
13 and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval  
14 with the LWDA. On June 1, 2022, Plaintiff gave the LWDA notice of this motion seeking final approval  
15 of this settlement.

16           I declare under the penalty of perjury under the laws of the State of California that the foregoing  
17 is true and correct. Executed this 1<sup>st</sup> day of June 2022, at San Diego, California.

18  
19                                           **JCL LAW FIRM, APC**

20                                           By:   
21                                           Jean-Claude Lapuyade  
22                                           Attorneys for Plaintiff  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)  
2 **JCL LAW FIRM, APC**  
3 3990 OLD TOWN AVENUE, SUITE C204  
4 SAN DIEGO, CA 92110  
5 TEL: 619-599-8292  
6 FAX: 619-599-8291

7 **ZAKAY LAW GROUP, APLC**  
8 SHANI O. ZAKAY (STATE BAR #277924)  
9 3990 OLD TOWN AVENUE, SUITE C204  
10 SAN DIEGO, CA 92110  
11 TEL: (619) 255-9047  
12 FAX: (858) 404-9203

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

LUIS DE JESUS; an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

PLAINTIFF,

vs.

GUARDIAN ANGLE HOME CARE, INC.,  
a Michigan Corporation; and DOES 1  
through 50, Inclusive;

DEFENDANTS.

Case No. 37-2020-00021049-CU-OE-CTL

[Action Filed 06/18/2020]

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

Judge: Honorable Ronald F. Frazier  
Dept.: C-65

This Stipulation of Class and PAGA Action Settlement and Release of Claims is entered into by and between Plaintiff LUIS DE JESUS (hereinafter “Plaintiff”), individually and on behalf of the Settlement Class, and in his representative capacity on behalf of the State of California and the Aggrieved Employees, and Defendant GUARDIAN ANGEL HOME CARE, INC., a Michigan corporation (hereinafter “Defendant”).

**A. DEFINITIONS**

1. “Action” shall mean the putative class action lawsuit designated *De Jesus v. Guardian Angel Home Care*, San Diego Superior Court, Case NO. 37-2020-00021049-CU-OE-CTL.
2. “Aggrieved Employees” shall mean all non-exempt employees who are or previously were employed by Defendant who earned piece-rate compensation in California during the PAGA Period.
3. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
4. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC, and Shani Zakay of Zakay Law Group, APLC.
5. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-third of the Total Settlement Amount currently estimated to be \$333,333.00 out of \$1,000,000 plus costs and expenses up to \$25,000.00] and supported by declaration as to the reasonableness of attorney’s fees and costs. Class Counsel’s award for attorneys’ fees will be allocated between Class Counsel as follows: Fifty percent (50%) to the JCL Law Firm, APC; fifty percent (50%) to the Zakay Law Group, APLC.
6. “Class Data” means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class

Member's full name; last known address; social security number; start dates and end dates of employment or the number of wage statements each Class Member received during the Class Period and PAGA Period.

7. "Class Members" or the "Class" means all of employees who are or previously were employed by Defendant who earned piece-rate compensation in California during the Class Period.

8. "Class Period" means the period from April 6, 2016 to August 2, 2021.

9. "Class Representative Service Award" means the amount that the Court authorizes to be paid to the Class Representative, in addition to his Individual Settlement Payment and his pro-rata share of the PAGA Settlement, in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release of Defendant and waiver of Civil Code 1542 from the named Plaintiff.

10. "Class Representative" or "Plaintiff" shall mean plaintiff LUIS DE JESUS.

11. "Court" means the Superior Court for the State of California, County of San Diego currently presiding over the Action.

12. "Defendant" shall mean GUARDIAN ANGEL HOME CARE, INC.,.

13. "Effective Date" means the earliest date, following entry by the Court of an order and judgment finally approving this Settlement, upon which one of the following have occurred: (i) if no objection is filed to the settlement and no objector appears at the hearing on final approval, then the date of the Court's entry of the order granting final approval, (ii) if an objection is filed to the settlement and/or an objector appears at the hearing on final approval, then the earlier of the following: (a) the expiration of all potential appeal periods without a filing of a notice of appeal of the final approval order or judgment; (b) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

14. “Funding Date” shall mean sixty-five (65) calendar days after the Effective Date and is the date Defendant and/or the Released Parties transfer the Total Settlement Amount into the QSF in accord with the terms of this Agreement.
15. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.
16. “Net Settlement Amount” or “NSA” means the Total Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement Administration Costs.
17. “Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).
18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*
19. “PAGA Payment Ratio” means the respective Workweeks during the PAGA Period for each Aggrieved Employee divided by the sum total of the Workweeks for all Aggrieved Employees during the PAGA Period.
20. “PAGA Period” means the period of April 6, 2019, through and until August 2, 2021.
21. “PAGA Settlement” shall mean Forty Thousand Dollars (\$40,000.00) to be allocated from the Total Settlement Amount. The amount of the PAGA Settlement is subject to Court approval pursuant to California Labor Code section 2699(l).
22. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.
23. “Payment Ratio” means the respective Workweeks for each Class Member divided by the total Workweeks for all Class Members.
- “QSF” means the Qualified Settlement Fund established, designated and maintained by the Settlement Administrator to fund the Total Settlement Amount.
24. “Released Class Claims” means any and all class claims contained in the operative

Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint during the Class Period.

25. “Released PAGA Claims” means any and all PAGA claims alleged in the operative complaint and Plaintiff’s PAGA notice to the LWDA which occurred during the PAGA Period and expressly excluding all other claim that cannot be releases by operation of law, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA Period (the “PAGA Release”).

26. “Released Parties” shall mean Defendant, including its predecessors, if any, as well as each of its respective predecessors, successors, and all former, current, and future related organizations, companies, divisions, subsidiaries, affiliates, joint employers and their employees and representatives, insurers, and parents, and collectively, their respective former, current and future directors, officers, employees, agents, representatives, attorneys, fiduciaries, assigns, heirs, executors, administrators, beneficiaries, insurers and trustees.

27. “Response Deadline” means the date ninety (90) days after the Settlement Administrator mails Notice Packets to Class Members and the last date on which Class Members may submit requests for exclusion or objections to the Settlement.

28. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) clearly state that the Class Member does not wish to be included in the Settlement; (b) set forth the name, address, telephone number and last four digits of the Social Security Number of the Class Member requesting exclusion; (c) be signed by the Class Member; (d) be returned by mail to the Settlement Administrator at the specified address indicated in the Notice Packet; and (e) be postmarked on or before the Response Deadline.

29. “Settlement” means the disposition of the Action pursuant to this Agreement.

30. “Settlement Administrator” means ILYM Group Inc., 14771 Plaza Drive, Ste. L,

1 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement  
2 Administrator establishes, designates and maintains, as a QSF under Internal Revenue  
3 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount  
4 of the Total Settlement Amount is deposited for the purpose of resolving the claims  
5 of Settlement Class Members. The Settlement Administrator shall maintain the funds  
6 until distribution in an account(s) segregated from the assets of Defendant and any  
7 person related to Defendant. ***All accrued interest shall be paid and distributed to the***  
8 ***Settlement Class Members as part of their respective Individual Settlement***  
9 ***Payment.***

10 31. "Settlement Administration Costs" means the fees and expenses reasonably incurred  
11 by the Settlement Administrator as a result of the procedures and processes expressly  
12 required by this Agreement. Any portion of the Settlement Administration Costs not  
13 used or approved by the Court shall be added to the Net Settlement Amount. However,  
14 the Parties hereby acknowledge that the Settlement Administration Costs may  
15 increase above the current estimate of Ten Thousand Dollars (\$10,000.00) and that  
16 any such additional Settlement Administration Costs that are approved by counsel for  
17 the Parties shall be taken out of the Total Settlement Amount. The Parties each  
18 represent that they do not have any financial interest in the Settlement Administrator  
19 or otherwise have a relationship with the Settlement Administrator that could create  
20 a conflict of interest.

21 32. "Settlement Class Members" or "Settlement Class" means all Class Members who  
22 have not submitted a timely and valid request for exclusion as provided in this  
23 Agreement.

24 33. "Total Settlement Amount" means One Million Dollars (\$1,000,000.00) that  
25 Defendant and/or the Released Parties must pay into the QSF in connection with this  
26 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class  
27 Representative Service Award, the Class Counsel Award, PAGA Settlement and the  
28

Settlement Administration Costs and *exclusive* of the employer's share of payroll tax, if any, triggered by any payment under this Settlement.

34. "Workweek", for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks where a Class Member was employed by Defendant in California, excluding weeks during which the Class Member did not perform any work for Defendant. For purpose of determining the Individual Settlement Payments and the Settlement Allocation, each Class Member who is a former employee no longer working for Defendant will be assigned two (2) additional Workweeks.

35. "PAGA Workweeks", for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of weeks of employment during the PAGA Period that each Aggrieved Employee worked in California.

**B. RECITALS**

1. On June 19, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant.
2. On August 27, 2020, Plaintiff filed an Amended Notice of Violations with the LWDA and served the same on Defendant.
3. On February 8, 2021, Plaintiff filed a Second Amended Notice of Violations with the LWDA and served the same on Defendant.
4. On March 24, 2021, Plaintiff filed the Lawsuit for:
  - a. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;
  - b. Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
  - c. Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*;
  - d. Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;

- e. Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order;
  - f. Failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
  - g. Failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; and
  - h. Failure to reimburse Plaintiff for required expenses in violation of California Labor Code section 2802.
5. On June 18, 2020, Plaintiff filed the First Amended Complaint (“FAC”) against Defendant adding a ninth cause of action for Violations of the Private Attorney General Act at Labor Code §§ 2698, *et seq.*, and a tenth cause of action for unpaid sick pay and failure to provide paid sick leave balance in violation of Cal. Lab. Code §§246, *et seq.*
  6. The Class Representative believes he have meritorious claims based on alleged violations of the California Labor Code, and the Industrial Wage Commission Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.
  7. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code and the Industrial Wage Commission Orders.
  8. The Class Representative is represented by Class Counsel. Class Counsel investigated the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through formal and informal discovery, and reviewing documents and information provided by

1 Defendant pursuant to informal requests for information to prepare for mediation.  
2 Defendant produced for the purpose of settlement negotiations certain employment  
3 data concerning the Settlement Class, which Class Counsel reviewed and analyzed.  
4 Based on their own independent investigation and evaluation, Class Counsel are of  
5 the opinion that the Settlement with Defendant is fair, reasonable and adequate, and  
6 is in the best interest of the Settlement Class in light of all known facts and  
7 circumstances, including the risks of significant delay, defenses asserted by  
8 Defendant, uncertainties regarding class certification, and numerous potential  
9 appellate issues. Although it denies any liability, Defendant is agreeing to this  
10 Settlement solely to avoid the inconveniences and cost of further litigation. The  
11 Parties and their counsel have agreed to settle the claims on the terms set forth in this  
12 Agreement.

13 9. On August 2, 2021, the Parties participated in mediation presided over by Steve  
14 Rottman, Esq., an experienced mediator of wage and hour class actions. The  
15 mediation concluded without a settlement. However, following the mediation, each  
16 side, represented by its respective counsel, were able to reach an agreement to settle  
17 this Action for the Total Settlement Amount of \$1,000,000. The parties subsequently  
18 executed a binding and enforceable Memorandum of Understanding ("MOU"), and  
19 agreed that a detailed, long-form Joint Stipulation of Settlement of Class and PAGA  
20 Action and Release of Claims would be completed shortly thereafter.

21 10. This Agreement replaces and supersedes the MOU and any other agreements,  
22 understandings, or representations between the Parties. This Agreement represents a  
23 compromise and settlement of highly disputed claims. Nothing in this Agreement is  
24 intended or will be construed as an admission by Defendant that the claims in the  
25 Action of Plaintiff or the Class Members have merit or that Defendant bears any  
26 liability to Plaintiff or the Class Members on those claims or any other claims, or as  
27 an admission by Plaintiff that Defendant's defenses in the Action have merit.  
28

11. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action.

12. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

**C. TERMS OF AGREEMENT**

1. Settlement Consideration and Settlement Payments by Defendants.

a. Settlement Consideration. In full and complete settlement of the Actions, and in exchange for the releases set forth below, Defendant and the Released Parties will pay the sum of the Individual Settlement Payment, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, as specified in this Agreement, equal to the Total Settlement Amount of One Million Dollars (\$1,000,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Total Settlement Amount shall revert to Defendant. Other than the Defendant's share of employer payroll taxes, or as otherwise specified in the Agreement, Defendant shall not be required to pay more than the Total Settlement Amount, except as provided for hereinbelow.

b. Class Size. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 316 individuals who collectively worked approximately 14,000 Workweeks ("Projected Workweeks") during the Class Period. In regard hereto, Defendant will provide a declaration under penalty

1 of perjury confirming the number of applicable Class Members and  
2 Workweeks they worked during the applicable Class Period. If the number of  
3 Class Members and/or the number of workweeks is greater than 110% of the  
4 estimate provided for herein, the end date of the Release Period and Class  
5 Period will be adjusted so that the number of workweeks in the Releases  
6 Period and Class Period does not exceed 110% of the estimate.

7 c. Settlement Payment. Defendant and the Released Parties, and each of them,  
8 are jointly and severally liable for payment of the Total Settlement Amount.  
9 Defendant shall pay, via wire transfer, the Total Settlement Amount to the  
10 Settlement Administrator on the Funding Date.

11 d. Defendant's Share of Payroll Taxes. Defendant's share of employer side  
12 payroll taxes is in addition to the Total Settlement Amount and shall be paid  
13 together with the Total Settlement Amount.

14 2. Release by Settlement Class Members. As of the Funding Date, in exchange for the  
15 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members  
16 release the Released Parties from the Released Class Claims for the Class Period.

17 3. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the  
18 consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of  
19 California release the Released Parties from the PAGA Released Claims for the PAGA  
20 Period.

21 4. General Release by Plaintiff. As of the Funding Date, for the consideration set forth  
22 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the  
23 Released Parties from any and all claims, whether known or unknown, which exist or  
24 may exist on her behalf as of the date of this Agreement, including but not limited to  
25 any and all tort claims, contract claims, wage claims, wrongful termination claims,  
26 disability claims, benefit claims, public policy claims, retaliation claims, statutory  
27 claims, personal injury claims, emotional distress claims, invasion of privacy claims,  
28 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising

1 under any federal, state or other governmental statute, law, regulation or ordinance,  
2 including, but not limited to claims for violation of the Fair Labor Standards Act, the  
3 California Labor Code, the Wage Orders of California's Industrial Welfare  
4 Commission, other state wage and hour laws, the Americans with Disabilities Act, the  
5 Age Discrimination in Employment Act (ADEA), the Employee Retirement Income  
6 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment  
7 and Housing Act, the California Family Rights Act, the Family Medical Leave Act,  
8 California's Whistleblower Protection Act, California Business & Professions Code  
9 Section 17200 et seq., and any and all claims arising under any federal, state or other  
10 governmental statute, law, regulation or ordinance. Plaintiff also waives and  
11 relinquishes any and all claims, rights or benefits that he may have under California  
12 Civil Code § 1542, which provides as follows:

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

19 Thus, notwithstanding the provisions of section 1542, and to implement a full and  
20 complete release and discharge of the Released Parties, Plaintiff expressly  
21 acknowledges this Settlement Agreement is intended to include in its effect, without  
22 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at  
23 the time of signing this Settlement Agreement, and that this Settlement Agreement  
24 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff  
25 has read this Settlement Agreement, including this waiver of California Civil Code  
26 section 1542, and that Plaintiff has consulted with or had the opportunity to consult  
27 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically  
28 about the waiver of section 1542, and that Plaintiff understand this Settlement

1 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enter  
2 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may  
3 discover facts different from or in addition to those Plaintiff now know or believe to be  
4 true regarding the matters released or described in this Settlement Agreement, and even  
5 so Plaintiff agrees that the releases and agreements contained in this Settlement  
6 Agreement shall remain effective in all respects notwithstanding any later discovery of  
7 any different or additional facts. Plaintiff expressly assumes any and all risk of any  
8 mistake in connection with the true facts involved in the matters, disputes, or  
9 controversies released or described in this Settlement Agreement or with regard to any  
10 facts now unknown to Plaintiff relating thereto.

11 5. Conditions Precedent: This Settlement will become final and effective only upon the  
12 occurrence of all of the following events:

- 13 a. The Court enters an order granting preliminary approval of the Settlement;
- 14 b. The Court enters an order granting final approval of the Settlement and a Final  
15 Judgment;
- 16 c. If an objector appears at the final approval hearing, the time for appeal of the  
17 Final Judgment and Order Granting Final Approval of Class Action  
18 Settlement expires; or, if an appeal is timely filed, there is a final resolution of  
19 any appeal from the Judgment and Order Granting Final Approval of Class  
20 Action Settlement; and
- 21 d. Defendant fully funds the Total Settlement Amount.

22 6. Defendant's Right To Rescind. If more than twelve percent (12%) of the Class  
23 Members opt out of the settlement by submitting valid and timely Requests for  
24 Exclusion, Defendant has the unilateral right in its sole discretion to rescind the  
25 Parties' Settlement. The Parties agree that they will not encourage any Class Member  
26 to object to the Settlement or to opt out. If Defendant exercises its option to rescind,  
27 Defendant shall: (a) provide written notice to Class Counsel at least ten (10) business  
28 days prior to the final approval hearing, provided Defendant has been provided notice

of all such opt outs, (b) pay all Settlement Administration Costs incurred by the Settlement Administrator up to the date of Defendant's notice to rescind and (c) pay for the cost of any curative notice sent to the Class Members. In the event the Settlement is terminated, the Parties shall proceed in all respects as if this Agreement had not been executed.

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

- a. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
- b. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
- c. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
- d. Defendant shall bear the sole responsibility for any cost to issue or reissue any curative notice to the Settlement Class Members and all Settlement Administration Costs incurred to the date of nullification.

8. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Class for the Class Period for purposes of settlement only. In the event that this Settlement is not approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits

1 Defendant from obtaining a complete resolution of the Released Claims, the  
2 conditional class certification (obtained for any purpose) shall be void *ab initio* and of  
3 no force or effect, and shall not be admissible in any judicial, administrative or arbitral  
4 proceeding for any purpose or with respect to any issue, substantive or procedural.

5 9. Tax Liability. The Parties make no representations as to the tax treatment or legal  
6 effect of the payments called for, and Class Members and/or Aggrieved Employees are  
7 not relying on any statement or representation by the Parties in this regard. Class  
8 Members and/or Aggrieved Employees understand and agree that they will be  
9 responsible for the payment of any taxes and penalties assessed on the Individual  
10 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA  
11 Settlement described and will be solely responsible for any penalties or other  
12 obligations resulting from their personal tax reporting of Individual Settlement  
13 Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement.

14 10. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,  
15 the "acknowledging party" and each Party to this Agreement other than the  
16 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision  
17 of this Agreement, and no written communication or disclosure between or among the  
18 Parties or their attorneys and other advisers, is or was intended to be, nor shall any  
19 such communication or disclosure constitute or be construed or be relied upon as, tax  
20 advice within the meaning of United States Treasury Department circular 230 (31 CFR  
21 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,  
22 her or its own, independent legal and tax counsel for advice (including tax advice) in  
23 connection with this Agreement, (b) has not entered into this Agreement based upon  
24 the recommendation of any other Party or any attorney or advisor to any other Party,  
25 and (c) is not entitled to rely upon any communication or disclosure by any attorney  
26 or adviser to any other party to avoid any tax penalty that may be imposed on the  
27 acknowledging party, and (3) no attorney or adviser to any other Party has imposed  
28 any limitation that protects the confidentiality of any such attorney's or adviser's tax

1 strategies (regardless of whether such limitation is legally binding) upon disclosure by  
2 the acknowledging party of the tax treatment or tax structure of any transaction,  
3 including any transaction contemplated by this Agreement.

4 11. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with  
5 the Court a Motion for Order Granting Preliminary Approval and supporting papers,  
6 which shall include this Settlement Agreement. Plaintiff will provide Defendant with  
7 a draft of the Motion at least 3 business days prior to the filing of the Motion to give  
8 Defendant an opportunity to propose changes or additions to the Motion.

9 12. Settlement Administrator. The Settlement Administrator shall be responsible for:  
10 establishing and administering the QSF; calculating, processing and mailing payments  
11 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and  
12 mailing the Notice Packets to the Class Members as directed by the Court; receiving  
13 and reporting the objections and requests for exclusion; calculating, deducting and  
14 remitting all legally required taxes from Individual Settlement Payments and  
15 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual  
16 Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA  
17 Settlement; processing and mailing tax payments to the appropriate state and federal  
18 taxing authorities; providing declaration(s) as necessary in support of preliminary  
19 and/or final approval of this Settlement; and other tasks as the Parties mutually agree  
20 or the Court orders the Settlement Administrator to perform. The Settlement  
21 Administrator shall also be responsible for posting a copy of the Class Notice on a  
22 webpage hosted by the Settlement Administrator throughout the Response Deadline  
23 and, subsequently, a copy of any judgment entered by the Court throughout the check  
24 cashing deadline. The Settlement Administrator shall keep the Parties timely apprised  
25 of the performance of all Settlement Administrator responsibilities by among other  
26 things, sending a weekly status report to the Parties' counsel stating the date of the  
27 mailing, the of number of Elections Not to Participate in Settlement it receives  
28 (including the numbers of valid and deficient), and number of objections received.

13. Notice Procedure.

a. Class Data. No later than ten (10) business days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class Data for purposes of preparing and mailing Notice Packets to the Class Members.

b. Notice Packets.

a) The Notice Packet shall contain the Notice of Class Action Settlement in a form substantially similar to the form attached as Exhibit A. The Notice of Class Action Settlement shall inform Class Members and Aggrieved Employees that they need not do anything in order to receive an Individual Settlement Payment and/or Aggrieved Employees' individual shares of the PAGA Settlement and to keep the Settlement Administrator apprised of their current mailing address, to which the Individual Settlement Payments and/or Aggrieved Employees' individual shares of the PAGA Settlement will be mailed following the Funding Date. The Notice of Class Action Settlement shall set forth the release to be given by all members of the Class who do not request to be excluded from the Settlement Class and/or Aggrieved Employees' in exchange for an Individual Settlement Payment and/or Aggrieved Employees' individual shares of the PAGA Settlement, the number of Work Shifts worked by each Class Member during the Class Period and PAGA Period, if any, and the estimated amount of their Individual Settlement Payment if they do not request to be excluded from the Settlement and each Aggrieved Employee's share of the PAGA Settlement, if any. The Settlement Administrator shall use the Class Data to determine Class Members' Work Shifts and PAGA Workweeks. The Notice will also advise the Aggrieved Employees that they will release the Released PAGA Claims and will

1 receive their share of the PAGA Settlement regardless of whether they  
2 request to be excluded from the Settlement.

3 b) The Notice Packet's mailing envelope shall include the following  
4 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE  
5 ENTITLED TO PARTICIPATE IN A CLASS ACTION  
6 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR  
7 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED  
8 NOTICE."

9 c. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,  
10 the Settlement Administrator will perform a search based on the National  
11 Change of Address Database to update and correct any known or identifiable  
12 address changes. No later than fourteen (14) calendar days after receiving the  
13 Class Data from Defendant, the Settlement Administrator shall mail and email  
14 copies of the Notice Packet to all Class Members via regular First-Class U.S.  
15 Mail and electronic mail. The Settlement Administrator shall exercise its best  
16 judgment to determine the current mailing address for each Class Member.  
17 The address identified by the Settlement Administrator as the current mailing  
18 address shall be presumed to be the best mailing address for each Class  
19 Member.

20 d. Undeliverable Notices. Any Notice Packets returned to the Settlement  
21 Administrator as non-delivered on or before the Response Deadline shall be  
22 re-mailed to any forwarding address provided. If no forwarding address is  
23 provided, the Settlement Administrator shall promptly attempt to determine a  
24 correct address by lawful use of skip-tracing, or other search using the name,  
25 address and/or Social Security number of the Class Member involved, and  
26 shall then perform a re-mailing, if another mailing address is identified by the  
27 Settlement Administrator. In addition, if any Notice Packets, which are  
28 addressed to Class Members who are currently employed by Defendant, are

1 returned to the Settlement Administrator as non-delivered and no forwarding  
2 address is provided, the Settlement Administrator shall notify Defendants.  
3 Defendant will request that the currently employed Class Member provide a  
4 corrected address and transmit to the Administrator any corrected address  
5 provided by the Class Member. Class Members who received a re-mailed  
6 Notice Packet shall have their Response Deadline extended fifteen (15) days  
7 from the original Response Deadline.

8 e. Disputes Regarding Individual Settlement Payments. Class Members will  
9 have the opportunity, should they disagree with Defendants' records regarding  
10 the start and end dates of employment to provide documentation and/or an  
11 explanation to show contrary dates. If there is a dispute, the Settlement  
12 Administrator will consult with the Parties to determine whether an  
13 adjustment is warranted. The Settlement Administrator shall determine the  
14 eligibility for, and the amounts of, any Individual Settlement Payments under  
15 the terms of this Agreement. The Settlement Administrator's determination of  
16 the eligibility for and amount of any Individual Settlement Payment shall be  
17 binding upon the Class Member and the Parties.

18 f. Disputes Regarding Administration of Settlement. Any disputes not resolved  
19 by the Settlement Administrator concerning the administration of the  
20 Settlement will be resolved by the Court under the laws of the State of  
21 California. Before any such involvement of the Court, counsel for the Parties  
22 will confer in good faith to resolve the disputes without the necessity of  
23 involving the Court.

24 g. Exclusions. The Notice of Class Action Settlement contained in the Notice  
25 Packet shall state that Class Members who wish to exclude themselves from  
26 the Settlement must submit a written request for exclusion by the Response  
27 Deadline. The written request for exclusion must state that the Class Member  
28 wishes to exclude himself or herself from the Settlement and (1) must contain

1 the name, address, and the last four digits of the Social Security number of the  
2 person requesting exclusion; (2) must be signed by the Class Member; (3)  
3 must be postmarked or fax stamped by the Response Deadline and returned to  
4 the Settlement Administrator at the specified address or fax telephone number;  
5 and (4) contain a typewritten or handwritten notice stating in substance: "I  
6 wish to opt out of the settlement of the class action lawsuit entitled *De Jesus*  
7 *v. Guardian Angel Home Care*, currently pending in the San Diego Superior  
8 Court, Case No. 37-2020-002149-CU-OE-CTL. I understand that by  
9 requesting to be excluded from the settlement, I will receive no money from  
10 the Settlement described in this Notice." The request for exclusion will not  
11 be valid if it is not timely submitted, if it is not signed by the Class Member,  
12 or if it does not contain the name and address and last four digits of the Social  
13 Security number of the Class Member. The date of the postmark on the  
14 mailing envelope or fax stamp on the request for exclusion shall be the  
15 exclusive means used to determine whether the request for exclusion was  
16 timely submitted. Any Class Member who requests to be excluded from the  
17 Settlement Class will not be entitled to an Individual Settlement Payment and  
18 will not be otherwise bound by the terms of the Settlement or have any right  
19 to object, appeal or comment thereon. However, any Class Member that  
20 submits a timely request for exclusion that is also a member of the Aggrieved  
21 Employees will still receive his/her pro rata share of the PAGA Settlement, as  
22 specified below, and in consideration, will be bound by the Release by the  
23 Aggrieved Employees as set forth herein. Settlement Class Members who fail  
24 to submit a valid and timely written request for exclusion on or before the  
25 Response Deadline shall be bound by all terms of the Settlement and any final  
26 judgment entered in this Action if the Settlement is approved by the Court.  
27 No later than fourteen (14) calendar days after the Response Deadline, the  
28 Settlement Administrator shall provide counsel for the Parties with a final list

1 of the Class Members who have timely submitted written requests for  
2 exclusion. At no time shall any of the Parties or their counsel seek to solicit  
3 or otherwise encourage members of the Class to submit requests for exclusion  
4 from the Settlement.

5 h. Objections. The Notice of Class Action Settlement contained in the Notice  
6 Packet shall state that Class Members who wish to object to the Settlement  
7 may submit to the Settlement Administrator a written statement of objection  
8 (“Notice of Objection”) shall have ninety (90) days from the date the notice is  
9 first mailed in which to object to the terms of the settlement. The postmark  
10 date of mailing shall be deemed the exclusive means for determining that a  
11 Notice of Objection was served timely. The Notice of Objection must be  
12 signed by the Settlement Class Member and state: (1) the case name and  
13 number; (2) the name of the Settlement Class Member; (3) the address of the  
14 Settlement Class Member; (4) the last four digits of the Settlement Class  
15 Member’s Social Security number; (4) the basis for the objection; and (5) if  
16 the Settlement Class Member intends to appear at the Final  
17 Approval/Settlement Fairness Hearing. Class Members who fail to make  
18 objections in writing in the manner specified above may still make their  
19 objections orally at the Final Approval/Settlement Fairness Hearing with the  
20 Court’s permission. Settlement Class Members will have a right to appear at  
21 the Final Approval/Settlement Fairness Hearing to have their objections heard  
22 by the Court. At no time shall any of the Parties or their counsel seek to solicit  
23 or otherwise encourage Class Members to file or serve written objections to  
24 the Settlement or appeal from the Order and Final Judgment. Class Members  
25 who submit a written request for exclusion may not object to the Settlement.  
26 Class Members may not object to the PAGA Settlement.

27 14. Funding and Allocation of the Total Settlement Amount. Defendant is required to  
28 pay the Total Settlement Amount on or before the Funding Date, plus any employer’s

1 share of payroll taxes as mandated by law within the time specified herein. The QSF  
2 shall be an interest-bearing account at a federally-insured bank that is mutually  
3 acceptable to the Parties and the Settlement Administrator. The funds in the QSF shall  
4 be invested either in short-term U.S. Treasury securities with maturity dates of less  
5 than 90 days at the time of deposit, or in an SEC-registered money market fund  
6 investing exclusively in U.S. Treasury securities with average maturities of less than  
7 90 days and rated AAA by Standard & Poor's. The Parties agree that the QSF is  
8 intended to be a "Qualified Settlement Fund" under Section 468B of the Internal  
9 Revenue Code and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, et seq., and will be  
10 administered by the Settlement Administrator as such. With respect to the QSF, the  
11 Settlement Administrator shall: (1) open and administer the Total Settlement Account  
12 in such a manner as to qualify and maintain the qualification of the QSF as a  
13 "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code and  
14 Treas. Reg. § 1.468B-1; (2) satisfy all federal, state and local and income and other  
15 tax reporting, return, and filing requirements with respect to the QSF and any interest  
16 or other income earned by the QSF, and (3) satisfy out of the QSF all (i) taxes  
17 (including any estimated taxes, interest, or penalties) with respect to the interest or  
18 other interest earned by the QSF, and (ii) fees, expenses and costs incurred in  
19 connection with the opening and administration of the QSF and the performance of  
20 its duties and functions as described in this Agreement. The aforementioned taxes,  
21 fees, costs and expenses shall be treated as and included in the costs of administering  
22 the QSF and as Settlement Administration Costs. The Parties and the Settlement  
23 Administrator shall treat the QSF as coming into existence as a QSF on the earliest  
24 date permitted as set forth in 26 C.F.R. § 1.468B-1(j)(2)(i), and such election  
25 statement shall be attached to the appropriate returns as required by 26 C.F.R. §  
26 1.468B-1(j)(e)(ii). The Parties agree to cooperate with the Settlement Administrator  
27 and one another to the extent reasonably necessary to carry out the provisions of this  
28 Section.

- 1           a.     Individual Settlement Payments. Individual Settlement Payments shall be paid  
2                     from the Net Settlement Amount and shall be paid pursuant to the formula set  
3                     forth herein. Using the Class Data, the Settlement Administrator shall add up  
4                     the total number of Work Shifts for all Class Members. The respective Work  
5                     Shifts for each Class Member will be divided by the total Work Shifts for all  
6                     Class Members, resulting in the Payment Ratio for each Class Member. Each  
7                     Class Member's Payment Ratio will then be multiplied by the Net Settlement  
8                     Amount to calculate each Class Member's estimated Individual Settlement  
9                     Payments. Each Individual Settlement Payment will be reduced by any legally  
10                    mandated employee tax withholdings (e.g., employee payroll taxes, etc.).  
11                    Individual Settlement Payments for Class Members who submit valid and  
12                    timely requests for exclusion will be redistributed to Settlement Class  
13                    Members who do not submit valid and timely requests for exclusion on a pro  
14                    rata basis based on their respective Payment Ratios.
- 15           b.     Calculation of Individual Payments to the Aggrieved Employees. Using the  
16                    Class Data, the Settlement Administrator shall add up the total number of  
17                    PAGA Workweeks for all Aggrieved Employees during the PAGA Period.  
18                    The respective PAGA Workweeks for each Aggrieved Employee will be  
19                    divided by the total PAGA Workweeks for all Aggrieved Employees,  
20                    resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each  
21                    Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the  
22                    Aggrieved Employee Payment to calculate each Aggrieved Employee's  
23                    estimated share of the PAGA Settlement.
- 24           c.     Allocation of Individual Settlement Payments. For tax purposes, Individual  
25                    Settlement Payments shall be allocated and treated as follows: 1/3 as wages  
26                    ("Wage Portion"); 2/3 as penalties and interest ("Non-Wage Portion"). The  
27                    Wage Portion is subject to wage withholdings and shall be reported on IRS  
28

1 Form W-2. The Non-Wage Portion shall not be subject to wage withholdings  
2 and shall be reported on IRS Form 1099.

3 d. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved  
4 Employee Settlement Payments shall be allocated and treated as 100%  
5 penalties and shall be reported on IRS Form 1099.

6 e. No Credit Toward Benefit Plans. The Individual Settlement Payments and  
7 individual shares of the PAGA Settlement made to Settlement Class Members  
8 and/or Aggrieved Employees under this Settlement Agreement, as well as any  
9 other payments made pursuant to this Settlement Agreement, will not be  
10 utilized to calculate any additional benefits under any benefit plans to which  
11 any Class Members may be eligible, including, but not limited to profit-  
12 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans,  
13 sick leave plans, PTO plans, and any other benefit plan. Rather, it is the  
14 Parties' intention that this Settlement Agreement will not affect any rights,  
15 contributions, or amounts to which any Class Members may be entitled under  
16 any benefit plans.

17 f. Treatment of Payments to Class Members. All monies received by Settlement  
18 Class Members under the Settlement which are attributable to wages shall  
19 constitute income to such Settlement Class Members solely in the year in which  
20 such monies actually are received by the Settlement Class Members. It is the  
21 intent of the Parties that Individual Settlement Payments and individual shares  
22 of the PAGA Settlement provided for in this Settlement agreement are the sole  
23 payments to be made by Defendant to Settlement Class Members and/or  
24 Aggrieved Employees in connection with this Settlement Agreement, with the  
25 exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved  
26 Employees are not entitled to any new or additional compensation or benefits as  
27 a result of having received the Individual Settlement Payments and/or their  
28 shares of the PAGA Settlement.

- 1                   g.     Mailing. Individual Settlement Payments and Aggrieved Employee Payments  
2                   shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'  
3                   and/or Aggrieved Employees last known mailing address no later than fifteen  
4                   (15) calendar days after the Funding Date.
- 5                   h.     Expiration. Any checks issued to Settlement Class Members and Aggrieved  
6                   Employees shall remain valid and negotiable for one hundred and eighty (180)  
7                   days from the date of their issuance. If a Settlement Class Member and/or  
8                   Aggrieved Employee does not cash his or her settlement check within 90 days,  
9                   the Settlement Administrator will send a letter to such persons, advising that  
10                  the check will expire after the 180<sup>th</sup> day, and invite that Settlement Class  
11                  Member and/or Aggrieved Employee to request reissuance in the event the  
12                  check was destroyed, lost or misplaced. In the event an Individual Settlement  
13                  Payment and/or Aggrieved Employee's individual share of the PAGA  
14                  Settlement check has not been cashed within one hundred and eighty (180)  
15                  days, all funds represented by such uncashed checks, plus any interest accrued  
16                  thereon, shall be distributed consistent with California Code of Civil  
17                  Procedure Section 384 as follows: to The Children's Advocacy Institute  
18                  (CAI), founded at the nonprofit University of San Diego School of Law in  
19                  1989. Class Counsel, Defendants' counsel, Plaintiff and Defendant do not  
20                  have any interest, pecuniary or otherwise, in CAI.
- 21                  i.     Class Representative Service Award. In addition to the Individual Settlement  
22                  Payment and their individual share of the PAGA Settlement to be paid to  
23                  Plaintiff, Plaintiff will apply to the Court for an award of not more than  
24                  \$10,000, as the Class Representative Service Award. Defendant does not  
25                  presently intend to oppose a Class Representative Service Award of not more  
26                  than \$10,000 for Plaintiff. In the event the Court reduces or does not approve  
27                  of the requested Service Award payments, Plaintiff shall not have the right to  
28                  revoke the settlement and it will remain binding. Plaintiff retains the right to

1 appeal any denial of a requested Service Award. The Settlement Administrator  
2 shall pay the Class Representative Service Award, either in the amount stated  
3 herein if approved by the Court or some other amount as approved by the  
4 Court, to Plaintiff from the Total Settlement Amount no later than ten (10)  
5 calendar days after the Funding Date. Any portion of the requested Class  
6 Representative Service Award that are not awarded to the Class  
7 Representatives shall be part of the Net Settlement Amount and shall be  
8 distributed to Settlement Class Members as provided in this Agreement. The  
9 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff  
10 for his Class Representative Service Award. Plaintiff shall be solely and  
11 legally responsible to pay any and all applicable taxes on their Class  
12 Representative Service Award and shall hold harmless the Released Parties  
13 from any claim or liability for taxes, penalties, or interest arising as a result of  
14 the Class Representative Service Award. The Class Representative Service  
15 Award shall be in addition to Plaintiff's Individual Settlement Payment as a  
16 Settlement Class Member. Approval of this Settlement shall not be  
17 conditioned on Court approval of the requested amount of the Class  
18 Representative Service Award. In the event that the Court reduces or does not  
19 approve the requested Class Representative Service Award, Plaintiff shall not  
20 have the right to revoke the Settlement, and it will remain binding.

21 j. Class Counsel Award. Defendant understands a motion by Class Counsel for  
22 attorneys' fees not to exceed one-third of the Total Settlement Amount  
23 currently estimated to be \$333,333.00 plus costs and expenses supported by  
24 declaration not to exceed Twenty-Thousand Dollars (\$20,000), from the Total  
25 Settlement Amount will be filed. Any portion of the requested Class Counsel  
26 Award that is not awarded to Class Counsel shall be part of the Net Settlement  
27 Amount and shall be distributed to Settlement Class Members as provided in  
28 this Agreement. The Settlement Administrator shall allocate and pay the Class

1 Counsel Award to Class Counsel from the Total Settlement Amount no later  
2 than five (5) calendar days after the Funding Date. Class Counsel shall be  
3 solely and legally responsible to pay all applicable taxes on the payment made  
4 pursuant to this paragraph. The Settlement Administrator shall issue an IRS  
5 Form 1099 — MISC to Class Counsel for the payments made pursuant to this  
6 paragraph. In the event that the Court reduces or does not approve the  
7 requested Class Counsel Award, Plaintiff and Class Counsel shall not have  
8 the right to revoke the Settlement, or to appeal such order, and the Settlement  
9 will remain binding.

10 k. PAGA Settlement. Forty Thousand Dollars (\$40,000) shall be allocated from  
11 the Total Settlement Amount for settlement of claims for civil penalties under  
12 the Private Attorneys General Act of 2004 (“PAGA Settlement”). The  
13 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA  
14 Settlement (\$30,000) to the California Labor and Workforce Development  
15 Agency no later than twenty-five (25) calendar days after the Funding Date  
16 (hereinafter “LWDA Payment”). Twenty-five (25%) of the PAGA Settlement  
17 (\$10,000) will be distributed to the Aggrieved Employees as described in this  
18 Agreement (hereinafter “Aggrieved Employee Payment”). For purposes of  
19 distributing the PAGA Settlement to the Aggrieved Employees, each  
20 Aggrieved Employee shall receive their pro-rata share of the Aggrieved  
21 Employee Payment using the PAGA Payment Ratio as defined above. Any  
22 reallocation of settlement proceeds to increase the PAGA Settlement will not  
23 constitute grounds by either party to void this Agreement, so long as the Total  
24 Settlement Amount does not increase.

25 l. Settlement Administration Costs. The Settlement Administrator shall be paid  
26 for the costs of administration of the Settlement and to perform all the duties  
27 of the Settlement Administrator as specified in section C(12) of this  
28 Agreement, from the Total Settlement Amount. The estimate of the Settlement

Administration Costs is \$10,000.00. The Settlement Administrator shall be paid the Settlement Administration Costs no later than twenty-five (25) calendar days after the Funding Date. Any reduction in the Settlement Administration Costs shall be added to the Net Settlement Amount and shall be distributed to the Class Members as provided in this Agreement.

15. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with the Court a Motion for Order Granting Final Approval and Entering Judgment, within twenty-eight (28) days following the expiration of the Response Deadline, which motion shall request final approval of the Settlement and a determination of the amounts payable for the Class Representative Service Award, the Class Counsel Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will provide Defendant with a draft of the Motion at least 3 business days prior to the filing of the Motion to give Defendant an opportunity to propose changes or additions to the Motion.

a. Declaration by Settlement Administrator. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement detailing the number of Notice Packets mailed and re-mailed to Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion, the number of objections received, the amount of the average Individual Settlement Payment and highest Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

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

- 1           15.   Review of Motions for Preliminary and Final Approval. Class Counsel will provide  
2           an opportunity for Counsel for Defendant to review the Motions for Preliminary and  
3           Final Approval, including the Order Granting Final Approval of Class Action  
4           Settlement, and Judgment before filing with the Court. The Parties and their counsel  
5           will cooperate with each other and use their best efforts to affect the Court's approval  
6           of the Motions for Preliminary and Final Approval of the Settlement, and entry of  
7           Judgment.
- 8           16.   Cooperation. The Parties and their counsel will cooperate with each other and use their  
9           best efforts to implement the Settlement.
- 10          17.   Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,  
11          except such proceedings necessary to implement and complete the Settlement, pending  
12          the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
- 13          18.   Amendment or Modification. This Agreement may be amended or modified only by a  
14          written instrument signed by counsel for all Parties or their successors-in-interest.
- 15          19.   Entire Agreement. This Agreement and any attached Exhibit constitute the entire  
16          Agreement among these Parties, and no oral or written representations, warranties or  
17          inducements have been made to any Party concerning this Agreement or its Exhibit  
18          other than the representations, warranties and covenants contained and memorialized  
19          in this Agreement and its Exhibit.
- 20          20.   Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
21          represent they are expressly authorized by the Parties whom they represent to negotiate  
22          this Agreement and to take all appropriate Action required or permitted to be taken by  
23          such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
24          documents required to effectuate the terms of this Agreement. The persons signing this  
25          Agreement on behalf of Defendant represent and warrant that they are authorized to  
26          sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that he  
27          is authorized to sign this Agreement and that he has not assigned any claim, or part of  
28          a claim, covered by this Settlement to a third-party.

- 1           21.   No Public Comment: The Parties and their counsel agree that they will not issue any  
2           press releases, initiate any contact with the press, respond to any press inquiry, or have  
3           any communication with the press about the fact, amount or terms of the Settlement  
4           Agreement. Class Counsel further agrees not to use the Settlement Agreement or any  
5           of its terms for any marketing or promotional purposes. Nothing herein will restrict  
6           Class Counsel from including publicly available information regarding this settlement  
7           in future judicial submissions regarding Class Counsel's qualifications and experience.  
8           Further, Class Counsel will not include, reference or use the Settlement Agreement for  
9           any marketing or promotional purposes, either before or after the Motion for  
10          Preliminary Approval is filed.
- 11          22.   Binding on Successors and Assigns. This Agreement shall be binding upon, and inure  
12          to the benefit of, the successors or assigns of the Parties, as previously defined.
- 13          23.   California Law Governs. All terms of this Agreement and the Exhibit and any disputes  
14          shall be governed by and interpreted according to the laws of the State of California.
- 15          24.   Counterparts. This Agreement may be executed in one or more counterparts. All  
16          executed counterparts and each of them shall be deemed to be one and the same  
17          instrument provided that counsel for the Parties to this Agreement shall exchange  
18          among themselves copies or originals of the signed counterparts.
- 19          25.   This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement  
20          is a fair, adequate and reasonable settlement of this Action and have arrived at this  
21          Settlement after extensive arms-length negotiations, taking into account all relevant  
22          factors, present and potential.
- 23          26.   Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with  
24          respect to the interpretation, implementation and enforcement of the terms of this  
25          Agreement and all orders and judgments entered in connection therewith, and the  
26          Parties and their counsel submit to the jurisdiction of the Court for purposes of  
27          interpreting, implementing and enforcing the settlement and all orders and judgments  
28          entered in connection with this Agreement.

- 1           27. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,  
2           the Court shall first attempt to construe the provisions valid to the fullest extent  
3           possible consistent with applicable precedents so as to define all provisions of this  
4           Agreement valid and enforceable.
- 5           28. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently  
6           intend to pursue any claims against the Released Parties, including, but not limited to,  
7           any and all claims relating to or arising from Plaintiff's employment with Defendant,  
8           regardless of whether Class Counsel is currently aware of any facts or legal theories  
9           upon which any claims or causes of action could be brought against Released Parties,  
10          including those facts or legal theories alleged in the operative complaint in this Action.  
11          The Parties further acknowledge, understand and agree that this representation is  
12          essential to the Agreement and that this Agreement would not have been entered into  
13          were it not for this representation.
- 14          29. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that  
15          Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Award  
16          below the amount Class Counsel requests, and either Party may appeal any order that  
17          materially alters the Agreement's terms.
- 18          30. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the  
19          Released Claims have merit and give rise to liability on the part of Defendants.  
20          Defendant claims that the Released Claims have no merit and do not give rise to  
21          liability. This Agreement is a compromise of disputed claims. Nothing contained in  
22          this Agreement and no documents referred to and no action taken to carry out this  
23          Agreement may be construed or used as an admission by or against the Defendant or  
24          Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other  
25          than as may be specifically set forth herein, each Party shall be responsible for and  
26          shall bear its/his own attorney's fees and costs.

27       ///

28       ///

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

DATED: 11/9/2021

DocuSigned by:  
*Luis de Jesus Claudio*  
LUIS DE JESUS C3247E130F684A9...

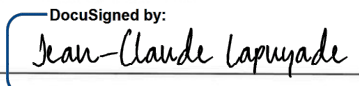
IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: 10/26/2021

  
GUARDIAN ANGEL HOME CARE, INC., a  
Michigan Corporation,  
By: Sam Kassab  
Its: President

IT IS SO AGREED AS TO FORM ONLY BY COUNSEL:

DATED: 11/9/2021

JCL LAW FIRM, A.P.C.  
By:   
0EBC25D5B9CD469...  
Attorneys for Plaintiff and the Settlement Class  
Members

DATED: 11/9/2021

ZAKAY LAW GROUP, APLC  
By:   
4ECDE73A91D4420...  
Attorneys for Plaintiff and the Settlement Class  
Members

DATED: October 26, 2021

FREEMAN MATHIS & GARY, LLP  
By:   
MANDY D. HEXOM  
Attorneys for Defendant  
GUARDIAN ANGEL HOME CARE, INC.

# **EXHIBIT B**

1 **JCL LAW FIRM, APC**

2 Jean-Claude Lapuyade (State Bar #248676)

3 Eduardo Garcia (State Bar # 290572)

4 5440 Morehouse Drive, Suite 3600

5 San Diego, CA 92121

6 Telephone: (619) 599-8292

7 Facsimile: (619) 599-8291

8 jlapuyade@jcl-lawfirm.com

9 egarcia@jcl-lawfirm.com

10 **ZAKAY LAW GROUP, APLC**

11 Shani O. Zakay (State Bar #277924)

12 Jackland Hom (State Bar #327243)

13 5440 Morehouse Drive, Suite 3600

14 San Diego, CA 92121

15 Telephone: (619) 255-9047

16 Facsimile: (858) 404-9203

17 shani@zakaylaw.com

18 jackland@zakaylaw.com

19 Attorneys for Plaintiff

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SAN DIEGO**

22 LUIS DE JESUS, an individual, on behalf of )  
23 himself and on behalf of all persons similarly )  
24 situated, )

25 Plaintiff, )

26 v. )

27 GUARDIAN ANGEL HOME CARE, INC., a )  
28 Michigan Corporation; SAM D. KASSAB; an )  
individual, and DOES 2-50, Inclusive, )

Defendants. )

Case No. 37-2020-00021049-CU-OE-CTL

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER**

Hearing Date: December 3, 2021  
Hearing Time: 8:30am

Honorable Judge Ronald Frazier  
Department: 65

Trial Date: Not Set  
Action Filed: June 18, 2020

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

**ELECTRONICALLY RECEIVED**

Superior Court of California,  
County of San Diego

11/08/2021 at 07:07:09 PM

Clerk of the Superior Court  
By Kristin Sorianosos, Deputy Clerk

**FILED**  
Clerk of the Superior Court

DEC 22 2021

By: H. CHAVARIN, Deputy

1 The Motion for Preliminary Approval of Class Action Settlement by Plaintiff Luis De  
2 Jesus ("Plaintiff") came on for hearing before this Court, the Honorable Ronald F. Frazier  
3 presiding. The Court, having considered the papers submitted in support of the motion,  
4 **HEREBY ORDERS THE FOLLOWING:**

5 1. The Court grants preliminary approval to the Settlement based on the terms set  
6 forth in Class Action Settlement Agreement ("Agreement"). This Order incorporates by  
7 reference the definitions in the Agreement, and all terms defined therein shall have the same  
8 meaning in this Order as set forth in the Agreement.

9 2. The Settlement provides for Defendant Guardian Angel Home Care, Inc.  
10 ("Defendant") to pay the Gross Settlement Amount of One Million Dollars (\$1,000,000). The  
11 Court preliminarily finds that the Settlement is fair, adequate, and reasonable to the Class, and  
12 preliminarily approves the terms of the settlement. This preliminary approval is subject to the  
13 objections of Class Members and final review by the Court.

14 3. A Final Approval Hearing shall be held before this Court on 6/24/22 at  
15 8:30 a.m.  
1:30 p.m. in Department 65 of the Superior Court of the State of California for the County of San  
16 Diego, to determine all necessary matters concerning the Settlement, including: whether the  
17 proposed settlement of the Action on the terms and conditions provided for in the Settlement is  
18 fair, adequate, and reasonable and should be finally approved by the Court; whether an Order  
19 Granting Final Approval should be entered; whether the plan of allocation contained in the  
20 Settlement should be approved as fair, adequate, and reasonable to the Class Members; and  
21 whether to finally approve the PAGA payment, the Class Counsel Fees Payment, the Class  
22 Counsel Litigation Expenses Payment, the Class Representative Service Payments to the  
23 Plaintiffs, and Settlement Administration Expenses. The motion for final approval and the  
24 motion for award of attorneys' fees and costs shall be filed no later than sixteen (16) court days  
25 before the Final Approval Hearing.

26 4. The Court recognizes that Plaintiff and Defendant stipulate and agree to  
27 certification of the Class for settlement purposes only. This stipulation will not be deemed  
28 admissible in this or any other proceeding should this Settlement not become final. Whether or

1 not the settlement is finally approved, neither the Agreement, nor any document, statement,  
2 proceeding or conduct related to the Agreement may be admitted in any proceeding as an  
3 admission by Defendant or any of the Released Parties, Plaintiff, or any person within the  
4 definition of the Class.

5 5. For settlement purposes only, the Court certifies the following Class: "all  
6 employees who are or previously were employed by Defendant who earned piece-rate  
7 compensation in California during the Class Period, defined as April 6, 2016 to August 2, 2021."

8 6. The Court preliminarily approves Plaintiff as the representative of the Class. The  
9 Court preliminarily approves Zakay Law Group, APC, and The JCL Law Firm, APC as counsel  
10 for the Class ("Class Counsel").

11 7. The Agreement specifies for an attorneys' fees award not to exceed one-third  
12 (1/3) of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed  
13 \$25,000, proposed Class Representative Service Payment to Plaintiff in an amount not to exceed  
14 \$10,000, and proposed PAGA payment to the LWDA in an amount not to exceed \$40,000 (75%  
15 of which shall be payable to the State of California, and 25% of which shall be payable to the  
16 Class). While these awards appear to be within the range of reasonableness, the Court will not  
17 approve the amount of attorneys' fees and costs until the Final Approval Hearing. Similarly, the  
18 Court will not decide the amount of any Class Representative Service Payment until the Final  
19 Approval Hearing. Plaintiff will be required to present evidence supporting these requests,  
20 including lodestar, prior to final approval.

21 8. The Court hereby approves, as to form and content, the Class Notice attached as  
22 Exhibit A to the Agreement. The Court finds that the distribution of the Class Notice  
23 substantially in the manner and form set forth in the Agreement and this Order meets the  
24 requirements of due process, is the best notice practicable under the circumstances, and shall  
25 constitute due and sufficient notice to all persons entitled thereto.

26 9. The Court hereby approves on a preliminary basis the Gross Settlement Amount  
27 as provided for in the Agreement. It appears to the Court on a preliminary basis that the  
28 settlement amount and terms are fair, adequate, and reasonable as to all potential Class Members

1 when balanced against the probable outcome of further litigation relating to liability and  
2 damages issues. It further appears that investigation and research have been conducted such that  
3 counsel for the Parties at this time are able to reasonably evaluate their respective positions. It  
4 further appears to the Court that settlement at this time will avoid substantial additional costs by  
5 all Parties, as well as avoid the delay and risks that would be presented by the further prosecution  
6 of the Actions. It further appears that the Settlement has been reached as the result of intensive,  
7 serious and non-collusive, arms-length negotiations before an experienced mediator.

8         10. The Court hereby appoints ILYM Group as Settlement Administrator. Within 14  
9 days of this Order, Defendant will provide to the Settlement Administrator an electronic database  
10 containing each Class Member's Class Data. No later than 14 days after receiving the Class  
11 Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via  
12 first-class regular U.S. Mail to their last known address.

13         11. Any Class Member may choose to opt out of and be excluded from the Class as  
14 provided in the Class Notice by following the instructions for requesting exclusion from the  
15 Class that are set forth in the Class Notice. All requests for exclusion must be submitted within  
16 ninety (90) days from the date the Class Notice is first mailed. Any such person who chooses to  
17 opt out of and be excluded from the Class will not be entitled to any recovery under the  
18 Settlement and will not be bound by the Settlement or have any right to object, appeal, or  
19 comment thereon. Any written request to opt out must comply with the instructions in the Class  
20 Notice and be signed by each such person opting out. Class Members who have not validly  
21 requested exclusion shall be bound by all determinations of the Court, the Agreement, and the  
22 Judgment.

23         12. Any Class Member who has not opted out may appear at the final approval  
24 hearing and may object or express their views regarding the Settlement, and may present  
25 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard  
26 and determined by the Court as provided in the Class Notice. Class Members will have ninety  
27 (90) days from the date the Class Notices are mailed to postmark their written objections to the  
28 Settlement Administrator. Class Members who fail to timely submit objections in the manner

1 specified above shall be deemed to have waived any objections and shall be foreclosed from  
2 making any written objection (whether by appeal or otherwise) to the Settlement. Class  
3 Members who fail to timely submit a written objection may still appear at the Final Approval  
4 Hearing to object orally in person.

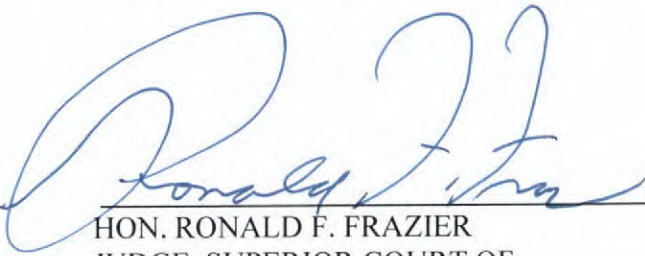
5 13. The Settlement is not a concession or admission, and shall not be used against  
6 Defendant as an admission or indication with respect to any claim of any fault or omission by  
7 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any  
8 document, statement, proceeding or conduct related to the Settlement, nor any reports or  
9 accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received  
10 as or deemed to be evidence for any purpose adverse to the Defendant, including, but not limited  
11 to, evidence of a presumption, concession, indication or admission by Defendant of any liability,  
12 fault, wrongdoing, omission, concession, or damage.

13 14. In the event the Settlement does not become effective in accordance with the  
14 terms of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or  
15 fails to become effective for any reason, this Order shall be rendered null and void and shall be  
16 vacated, and the Parties shall revert to their respective positions as of before entering into the  
17 Agreement.

18 15. The Court reserves the right to adjourn or continue the date of the final approval  
19 hearing and all dates provided for in the Agreement without further notice to Class Members,  
20 and retains jurisdiction to consider all further applications arising out of or connected with the  
21 proposed Settlement.

22 **IT IS SO ORDERED.**

23  
24 Dated: 12/22/21

  
HON. RONALD F. FRAZIER  
JUDGE, SUPERIOR COURT OF  
CALIFORNIA, COUNTY OF SAN DIEGO

# **EXHIBIT C**

## Tesla Stone

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**From:** FormAssembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit  
<lwdadonotreply@dir.ca.gov>  
**Sent:** Monday, November 8, 2021 6:54 PM  
**To:** Tesla Stone  
**Subject:** Thank you for your Proposed Settlement Submission

11/08/2021 06:53:48 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

# **EXHIBIT D**