

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
David@yeremianlaw.com
Natalie Haritounian (SBN 324318)
natalie@yeremianlaw.com
2540 Foothill Blvd., Suite 201
La Crescenta, California 91214
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

DAVTYAN LAW FIRM, INC.
Emil Davtyan (SBN 299363)
emil@davtyanlaw.com
400 N. Brand Blvd, Suite 700
Glendale, CA 91203
Telephone: (818) 875-2008
Facsimile: (818) 722-3974

Attorneys for Plaintiff MARY JEAN SMITH,
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

MARY JEAN SMITH, an individual, on
behalf of herself and others similarly situated,

Plaintiff,

vs.

NOIA RESIDENTIAL SERVICES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20CECG01820

CLASS ACTION

Assigned for All Purposes To:

Hon. Kimberly Gaab
Dept.: 503

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Memorandum of Points
and Authorities; Declaration of Emil Davtyan;
Declaration of Mary Jean Smith; Declaration of
Jarrett Gorlick; and [Proposed] Order]*

Date: April 4, 2023
Time: 3:30 p.m.
Dept: 503

1 on representing employees, including in wage-and-hour class actions. During my career I have
2 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel
3 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
4 obtained six and seven figure settlements against a range of defendants, including Fortune 500
5 companies. These cases have involved the gamut of wage-and-hour claims, including claims for
6 failure to pay minimum wages, unpaid wages and overtime, failure to provide meal breaks,
7 inaccurate pay statements, and failure to pay timely wages - similar to claims at issue in the
8 present matter.

9 6. I am experienced in prosecuting employment matters, particularly class actions. In
10 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
11 class-action lawsuits pending in various state and federal jurisdictions throughout California.

12 7. My extensive experience in litigating employment wage and hour matters has been
13 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
14 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
15 wage and hour litigation requires skill and knowledge concerning the constantly evolving
16 substantive law (state and federal), as well as the procedural law of class action litigation. In this
17 action, I am fully equipped to use the skills and knowledge I have developed through more than a
18 decade of prosecuting and defending wage and hour class actions to fairly and adequately
19 represent the interests of the Class. Therefore, on the account of my resources, experience, and
20 knowledge, I am well qualified to act as Class Counsel and represent Plaintiff and the putative
21 Class Members in this action.

22 8. In the last several years I have had several contested class cases certified. When
23 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the
24 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
25 over 100 class action settlements, including many involving the same issues presented in this
26 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*
27 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
28 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead

1 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size
2 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;
3 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead
4 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx.
5 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead
6 counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600;
7 lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx.
8 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead
9 counsel); *Utlely v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
10 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
11 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead
12 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);
13 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);
14 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead
15 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);
16 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479;
17 class size approx 60; lead counsel).

18 9. For purposes of this motion, the “Class” or “Class Members” consist of “all current and
19 former non-exempt employees who worked for Defendant in California at any time between June
20 24, 2016 and October 8, 2021.” I do not believe that I have any conflicts of interest with the Class
21 or with the Class Representative. I am not related to the Class Representative. I have not
22 previously represented Defendant in any matter. I respectfully submit that I, and David Yeremian
23 & Associates, Inc. are well suited to act as Class Counsel in this action, and we have and will
24 continue to vigorously represent the interests of the Class Members.

25 **PROCEDURAL HISTORY**

26 10. On June 24, 2020, Plaintiff filed a class action complaint against Defendant alleging
27 ten causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime
28 Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226(a); (4) Rest-Break

1 Liability Under Labor Code § 226.7; (5) Failure to Reimburse Expenses Under Labor Code §
2 2802; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code §221; (8) Violation of
3 Labor Code §203; (9) Violation of Labor Code §204; and (10) Violation of Business &
4 Professions Code § 17200 *et seq.* Plaintiff alleges Defendant failed to pay minimum wages and
5 overtime for all hours worked, failed to provide compliant meal and rest breaks, failed to pay
6 premium wages for missed meal and rest breaks, failed to furnish accurate wage statements,
7 failed to timely pay wages including final wages, and failed to reimburse for necessary business
8 expenses.

9 11. On June 5, 2020, Plaintiff submitted a Private Attorneys General Act (“PAGA”) notice
10 letter to the Labor Workforce Development Agency (“LWDA”) and served Defendant. A true and
11 correct copy of the confirmatory email and the LWDA letter submitted on behalf of Plaintiff is
12 attached hereto as **Exhibit 2**. The LWDA did not express an interest in investigating Plaintiff’s
13 claims within the 65 day period. Therefore, on September 11, 2020, Plaintiff filed a First
14 Amended Complaint adding a cause of action for penalties under the Private Attorneys General
15 Act (“PAGA”).

16 **INVESTIGATION AND DISCOVERY**

17 12. I have participated in all discovery, mediation and negotiations since the inception of
18 Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched the facts and
19 circumstances underlying the pertinent issues and the law applicable thereto. This required
20 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary
21 research into the various legal issues involved in the case. After conducting their initial
22 investigation, Class Counsel determined that Plaintiff’s claims were well-suited for class and
23 representative action adjudication owing to what appeared to be a common course of conduct
24 affecting a similarly situated group of employees.

25 13. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
26 and claims giving rise to the action, including: (1) conducting informal and formal discovery, and
27 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
28 pay records as well as employment handbooks, Plaintiff’s personnel files, relevant policies and

1 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
2 damage models based on interpretations of California law; and (5) reviewing information
3 provided by Defendant at the mediation. The Class enumerated in this action is ascertainable
4 because the Class Members may be readily identified by reference to Defendant's records.
5 Defendant have agreed to share the information from these records with the Settlement
6 Administrator in order to identify and contact the Class Members. I understand there are
7 approximately 141 total Class Members.

8 14. Defendant, for their part, vigorously contested liability, the amount of claimed
9 damages, and the propriety of class certification. After Class Counsel analyzed the relevant
10 documents and other gathered data, Class Counsel believed that this case was appropriate for
11 resolution via mediation. Given the high level of risk present for both sides, the parties elected to
12 mediate Plaintiff's claims and explore the possibility of settlement.

13 15. On August 9, 2021, the parties mediated this case with Honorable Carl J. West (Ret.), a
14 respected and highly experienced mediator in wage and hour class actions. During mediation,
15 Plaintiff and Defendant's counsel discussed all aspects of the case, including the risks of litigation
16 and the risks to both parties of proceeding with a motion for class certification as well as the law
17 relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. As a result of
18 the mediation, the parties agreed to settle the lawsuit according to the terms set forth in the
19 Settlement Agreement. From Class Counsel's review of the facts, strengths, and weaknesses of
20 the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation
21 experience, Class Counsel believes that the recovery for each class member is fair and reasonable
22 taking into consideration the amounts received in other wage and hour class actions, the risks
23 inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to
24 the settlement award he or she will receive. Further, and based on the settlement negotiations,
25 which were extensive and conducted in good faith and at arm's length between attorneys with
26 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
27 was the product of a non-collusive settlement process in which the parties were forced to make
28 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

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1 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
2 the number of workweeks a Class Member worked during the Class Period as a non-exempt
3 employee in California. (Exh. 1, §37)

4 20. Defendant's corporate payroll tax obligations shall be paid in addition to the Gross
5 Settlement Amount, and none of the Gross Settlement Amount will revert to Defendant. (Exh. 1,
6 §13)

7 21. The settlement amount was a compromise figure, factoring in the inherent risks related
8 to certification, liability and damages. However, taking into account all of the circumstances of
9 the action and the defenses raised by Defendant against certification, liability and damages, Class
10 Counsel believes that the settlement is fair and reasonable.

11 22. Class Members shall each receive a Notice of Class Action Settlement, Objection
12 Form, Request for Exclusion Form, and Dispute Form ("Notice Packet") via regular First Class
13 U.S. Mail, using the most current, known mailing addresses identified in the Class List. (Exh. 1,
14 §41) Before mailing, the Settlement Administrator will perform a search based on the National
15 Change of Address Database for information to update and correct for any known or identifiable
16 address changes. (Exh. 1, §42) If the Notice Packet is returned as non-deliverable on or before the
17 Response Deadline and a new address is obtained by way of a returned Notice Packet, then the
18 Settlement Administrator will promptly forward the original Notice Packet to the updated address
19 via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing.
20 (Exh. 1, §42).

21 23. Any Class Member wishing to dispute the information provided in their Class Notice
22 shall mail the Dispute Form to the Settlement Administrator by the Response Deadline. (Exh. 1,
23 §44) To the extent Class Members dispute their employment dates or the number of Workweeks,
24 Class Members may produce evidence to the Settlement Administrator showing that such
25 information is inaccurate. (*Id.*) The Settlement Administrator will advise the Parties of such
26 dispute and allow Defendant five (5) business days to respond with any additional information or
27 records. (*Id.*) The Settlement Administrator will advise the Parties of such dispute and allow
28 Defendant five (5) business days to respond with any additional information or records. The

1 Settlement Administrator may rely on Defendant's records without further foundation to perform
2 its calculus but must give fair weight to records provided by Class Members. (*Id.*) The Settlement
3 Administrator will make a recommendation and the Class Member may either accept it or reject
4 it. (*Id.*) Class Counsel shall file with the Court all disputes submitted by Class Members, the
5 evidence submitted, and the resolution of those disputes. (*Id.*) The Court shall have the right to
6 review any decision made by the Settlement Administrator regarding a claim dispute. (*Id.*)

7 24. Any Class Member wishing to opt-out from the Settlement Agreement must sign and
8 return the Request for Exclusion Form, postmarked within the Response Deadline to the
9 Settlement Administrator. (Exh. 1, §45). The Response Deadline will be forty five (45) calendar
10 days after the date the Notice Packet was mailed. (*Id.*) The postmark date will be the exclusive
11 means to determine whether a Request for Exclusion has been timely submitted. (*Id.*)

12 25. Any Class Members wishing to object to the Settlement must sign and return the
13 Objection Form, postmarked within the Response Deadline to the Settlement Administrator or by
14 appearing at the hearing for Final Approval. (Exh. 1, §48) All objections must be served within
15 forty five (45) calendar days of first mailing of the Notice Packet. (*Id.*) The postmark date will be
16 the exclusive means to determine whether an Objection has been timely submitted. (*Id.*)

17 **THE STRENGTH OF PLAINTIFF' CASE**

18 **IN LIGHT OF THE SETTLEMENT AMOUNT**

19 26. Because the class consists of numerous employees, it was unlikely that the potential
20 monetary claims of individual Class Members would have proved viable without the class-action
21 mechanism. The Settlement Agreement should be approved in light of two California appellate
22 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
23 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

24 27. The strength of the Plaintiff's case in light of the settlement amount is deemed by
25 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
26 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay
27 minimum wages and overtime for all hours worked, failed to provide compliant meal and rest
28 breaks, failed to pay premium wages for missed meal and rest breaks, failed to furnish accurate

1 wage statements, failed to timely pay wages including final wages, and failed to reimburse for
2 necessary business expenses all in violation of California law. Plaintiff seek related violations of
3 California's Business & Professions Code, and penalties pursuant to Labor Code § 2699 *et seq.*
4 Plaintiff conducted discovery and investigated each of the claims they alleged. Specifically,
5 Defendant produced the following: (a) all versions of Defendant's employee handbook in effect
6 during the Class Period; (b) all versions of Defendant's policies and procedures pertaining to
7 minimum wages, overtime, meal breaks, and rest breaks, which were in effect during the Class
8 Period; (c) Plaintiff's personnel files; (d) Plaintiff's timekeeping and payroll records; (e) a
9 sampling of the timekeeping and payroll records; and (f) information on the class demographics
10 including the total number of Class Members during the Class Period, total number of Class
11 Members during the PAGA Period, total number of current employees, total number of former
12 employees in the relevant time period, average hourly rate of pay, total number of workweeks
13 worked during the Class Period, and the total number of paychecks issued during the relevant
14 time period. The merits of each of these claims will be addressed separately below.

15 28. Based on the data provided, Class Counsel estimated the following maximum
16 exposures: unpaid wage claim at \$75,724, meal period claim at \$937,620, rest period claim at
17 \$683,062, wage statement claim at \$340,000, waiting time penalties at \$202,022, reimbursement
18 claim at zero, and on PAGA, Plaintiff estimated the maximum exposure at \$390,500.

19 29. However, taking into account the difficulties of proof, the Defendant's defenses, and
20 other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or
21 other relief that the class could reasonably expect to be awarded at trial is significantly less than
22 the maximum exposure.

23 **Minimum Wages and Overtime**

24 30. Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
25 wages for all hours worked, in violation of minimum wage laws. Plaintiff contended that Class
26 Members were not paid all wages they were owed including for all worked performed and for all
27 overtime hours worked. Specifically, Plaintiff contended Class Members would work before their
28 scheduled shifts began and also after their scheduled shifts ended, but they were required to

1 manually record their hours conforming to their scheduled shift times instead of the actual hours
2 they worked. (Declaration of Mary Jean Smith (“Smith Decl.”) ¶ 7. Plaintiff also contended that
3 Defendant failed to incorporate non-discretionary pay into the regular rate of pay used to
4 calculate and pay overtime compensation as well as sick pay. (Smtih Dec. at ¶ 7.)

5 31. Defendant contended that they paid for all reported hours worked, that Class Members
6 were trained to record all hours worked, and that they paid proper minimum wages. Defendant
7 also maintained that the allegations regarding failure to pay wages for hours worked in excess of
8 eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant
9 argued that given their written policies and practices, any unrecorded hours were likely subject to
10 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,
11 Class Counsel had to apply a significant discount to damages based on this theory.

12 32. Based on the foregoing facts, Class Counsel’s expert estimated Defendants’ exposure
13 for unpaid wages to be approximately \$74,724 based on a regular rate of pay claim. (Declaration
14 of Jarrett Gorlick (“Gorlick Decl.”) at ¶ 10.)

15 33. Pursuant to the Settlement Agreement, the net settlement proceeds will be divided
16 among the class based on the number of workweeks each one worked within the Class Period.
17 The Settlement treats each Class Member as having been affected equally given that all Class
18 Members were subject to Defendants’ same policies, procedures, and practices of clocking in and
19 out. For instance, Plaintiff’s allegation that Class Members were required to work off the clock
20 would apply to all Class Members given that all Class Members were required manually record
21 their hours conforming to their scheduled shift times instead of the actual hours they worked.
22 (Smith Decl. at ¶ 6, 12.)

23 **Meal Periods and Rest Breaks**

24 34. Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted
25 meal breaks to Class Members. (Smith Decl. at ¶ 8.) *See Brinker Restaurant Corp. v. Super. Ct.*
26 (2012) 53 Cal.4th 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the
27 employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is
28 relieved of all duty for the entire period.”).

1 35. Plaintiff argued that Defendant had a common practice and policy of denying
2 compliant meal periods and that Defendant's meal policies were facially defective. Specifically,
3 Defendant maintained a written policy that stated: "A non-exempt employee who works shifts in
4 excess of six (6) hours must receive a meal period." A true and correct copy of Defendant's Meal
5 Break Policy is attached hereto as **Exhibit 3**. All Class Members were subject to this uniform
6 policy. However, this policy is in violation of the law. Pursuant to Labor Code § 512 an employer
7 may not employ someone for a shift of more than five (5) hours without providing him or her
8 with a meal period of not less than thirty (30) minutes or for a shift of more than ten (10) hours
9 without providing him or her with a second meal period of not less than thirty (30) minutes.
10 Moreover, Plaintiff and Class Members were regularly required to work through their meal
11 periods, never being provided the opportunity to take uninterrupted thirty (30) minute meal
12 periods in accordance with California law. Moreover, what meal periods Class Members did
13 receive were provided well after their fifth consecutive hour of work. This practice of providing
14 untimely and late meal periods comports with Defendant's defective meal period policy
15 (requiring Class Members to take their meal periods after their fifth hour of work) uniformly
16 applicable to all Class Members. For each meal period missed, of less than 30 minutes, or taken
17 late for which the employee was not provided a reasonable opportunity to take a complete and
18 timely meal period, an employer must pay the employee an additional one hour of compensation.
19 Labor Code § 226.7. This additional hour of compensation is referred to as "premium pay." To
20 comply with these laws, every employer must keep, for each employee, accurate time records
21 showing when the employee begins and ends each work period and takes his or her meal periods.
22 See Applicable Wage Order.

23 36. Defendant disagreed with Class Counsel's interpretation of the law and facts.
24 Defendant contended that Class Members were given a reasonable opportunity to take their meal
25 periods, and in fact received their meal periods most of the time.

26 37. Class Counsel's expert estimated Defendants' maximum total exposure on the meal
27 break claim at approximately \$937,620 (Gorlick Decl. at ¶ 11.) However, Class Counsel believes
28 it would be a difficult certifying this claim owing to the individualized nature of why an

1 employee took a break late or perhaps decided to end their lunch early. Even if the claim were
2 certified, the damages could be reduced owing to the individualized nature of the reasons a Class
3 Member took a noncompliant break.

4 38. The same argument applied to rest breaks. (Smith Decl. at ¶ 9.) A true and correct copy
5 of Defendants' Rest Break Policy is attached hereto as **Exhibit 4**. All Class Members were
6 subject to this uniform policy. Plaintiff contended that Defendant did not provide Class Members
7 with paid 10-minute rest breaks for every four hours or major fraction thereof. Class Members
8 consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks
9 of not less than ten minutes for each consecutive four hour shift which they were denied. Class
10 Members were required to work through their rest breaks, and through their entire shifts.

11 39. Defendant maintained that they did provide the reasonable opportunity for Class
12 Members to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest
13 breaks need not be recorded and Defendant disputes all allegations that breaks were not received.
14 As these considerations would likely depress the damages *vel non* ultimately awarded, Class
15 Counsel applied significant and appropriate discounts to the rest-break claim.

16 40. Class Counsel's expert estimated Defendants' maximum total exposure on the rest
17 break claim at approximately \$683,062. (Gorlick Decl. at ¶ 12.) Class Counsel's expert calculated
18 the maximum total exposure by assuming a 50% violation rate. However, Class Counsel believes
19 it would be very difficult to be awarded any damages for the rest break claim given that
20 Defendants' rest break policy was valid and rest breaks need not be recorded and can be waived
21 by the employees. Class Counsel also believes many individualized issues would apply making
22 certification of this claim difficult to achieve. Thus, Class Counsel believes the realistic exposure
23 on this claim is \$0.

24 **Paystub Violations**

25 41. Plaintiff also contended that Defendant failed to provide Class Members with accurate,
26 itemized wage statements in writing as required by California Labor Code § 226(a) because the
27 wage statements given to Class Members failed to incorporate non-discretionary pay into the
28 regular rate of pay used to calculate and pay overtime compensation as well as sick pay. (Smith

1 Decl. ¶ 7, **Exhibit 5**). For instance, Class Members were required to participate in weekly
2 meetings and they were paid for this time on a separate line item under “INSERVICE” on their
3 wage statements. (Smith Decl. ¶ 7, **Exhibit 5**). Plaintiff argued Defendant did not factor this non-
4 discretionary pay into the regular rate of pay used to calculate and pay overtime. Additionally,
5 Class Members received a \$0.25 bonus for each individual client they assisted in administering
6 medication to during their scheduled shifts. Defendant paid for this bonus on a separate line item
7 under “PassingMed” on their wage statements. (Smith Decl. ¶ 7, **Exhibit 5**). However, Plaintiff
8 claimed Defendant did not factor this non-discretionary bonus into the regular rate of pay used to
9 calculate and pay overtime compensation. Plaintiff further contended the wage statements failed
10 to accurately account for unpaid wages and overtime due to off the clock work. Moreover,
11 Plaintiff contended the wage statements failed to accurately account for premium pay for
12 deficiently provided meal and rest breaks which Defendant knew or reasonably should have
13 known were owed to Plaintiff and Class Members. This claim applies to all Class Members
14 equally due to Defendants’ uniform practice and policies. As a direct and proximate cause of
15 Defendant’s violation of Labor Code § 226(a), the Class Members suffered injuries, including
16 among other things confusion over whether they received all wages owed them. Pursuant to
17 Labor Code §§ 226(a) and 226(e), employees are entitled to recover the greater of all actual
18 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
19 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
20 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
21 reasonable attorneys’ fees.

22 42. Defendant contended that Plaintiff’s claim for further Labor Code § 226(e) penalties
23 would depend in large part on their underlying meal and rest period and wage claims, and thus be
24 subject to the same defenses. Additionally, Defendant argued this claim has little or no value. *See*
25 *e.g., Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019), *rev. granted*
26 *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, 2020 Cal. LEXIS 167 (Jan. 2, 2020)
27 ((noting, for example, that the remedy for a meal period/rest break violation is an extra hour of
28 pay, but that does not transform the remedy into a wage for triggering section 203 waiting time

1 penalties; similar analysis applied in rejecting a derivative claim for paystub penalties); *see also*
2 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements
3 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later
4 determined that employer did not properly pay all wages due). Defendant further contended that
5 meal break violations, even if established, could not be the predicate for a Labor Code § 226
6 wage statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184,
7 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage
8 statement need only document compensation actually received and the hours used to calculate
9 that compensation). Defendant further contended that Labor Code § 226(e) penalties are not
10 automatic. Rather, the employee must show (1) that he or she “suffered injury” from the
11 employer’s failure to provide compliant wage statements, *see Elliot v. Spherion Pacific Work,*
12 *LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law) (holding employee was not
13 entitled to penalties because no injury was shown), and (2) Defendant’s noncompliance was
14 “knowing and intentional.” Finally, because the damages for this cause of action are penalties, the
15 statute of limitations only runs from one year prior to the filing of the original complaint. *See Cal.*
16 *Civ. Pro. § 340.*

17 43. Class Counsel’s expert estimated Defendants’ maximum total exposure on the section
18 226 claim at approximately \$340,000 (\$50/\$100 x 3,905 number of paystubs from June 24, 2019
19 to October 8, 2021; based on 85 employees in applicable statute of limitations for this claim).
20 (Gorlick Decl. at ¶ 13.) Class Counsel believes it may be difficult to prevail on this claim because
21 Class Members would need to show that they suffered an injury and that Defendants’
22 noncompliance was knowing and intentional (on top of the challenges described above with the
23 underlying wage and break claims).

24 **Failure to Reimburse for Necessary Business Expenditures**

25 44. Labor Code § 2802 provides that an employer must reimburse employees for all
26 necessary expenditures incurred in the performance of their job duties. Plaintiff worked for
27 Defendant and in the course of performing their job duties, incurred necessary business related
28 expenses, including, but not limited to cellular phone expenditures and purchasing of scrubs.

1 Defendant maintained that Plaintiff and the Class members were not required to use their personal
2 cellular phone on a regular basis during their scheduled shift and instructed Class Members how
3 to obtain reimbursement. This claim was therefore too individualized to be certifiable and Class
4 Counsel valued this claim at \$0.00.

5 **Failure to Pay Final Wages**

6 45. In failing to pay the California Class Members their minimum wages, overtime wages,
7 and premium pay for deficiently provided meal periods and rest breaks, all discussed above,
8 Defendant willfully failed to pay these the California Class Members all wages due and certain at
9 the time of termination or within seventy-two (72) hours of resignation, as required under Labor
10 Code § 203. (Smith Decl. at ¶ 11.) Plaintiff's claim for waiting time penalties applies to all Class
11 Members equally given that the failure to timely pay final wages derive from the unpaid wages
12 and break claims which also apply to all Class Members equally due to Defendants' uniform
13 practice and policies.

14 46. Labor Code § 203 provides that if an employer willfully fails to pay an employee all
15 wages due at termination or within 72 hours of resignation, then that employee's wages shall
16 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
17 Because Class Members stopped working for Defendant but again were not paid their full
18 compensation for the reasons discussed above, Class Members did not receive all wages due upon
19 termination of employment.

20 47. Defendant argued that, under Labor Code § 203, employers are only obligated to pay
21 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
22 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

23 A willful failure to pay wages within the meaning of Labor Code Section 203
24 occurs when an employer intentionally fails to pay wages to an employee when
25 those wages are due. However, a good faith dispute that any wages are due will
preclude imposition of waiting time penalties under Section 203.

26 A "good faith dispute" that any wages are due occurs when an employer presents
27 a defense, based in law or fact, which, if successful, would preclude any recovery
28 on the part of the employee. The fact that a defense is ultimately unsuccessful will
not preclude a finding that a good faith dispute did exist. Defenses presented
which, under all the circumstances, are unsupported by any evidence, are

1 unreasonable, or are presented in bad faith, will preclude a finding of a “good
2 faith dispute.”

3 Defendant maintained that because they had viable defenses in both law and fact, especially in
4 light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case,
5 such penalties were subject to a three-year limitations period under Labor Code § 203(b).

6 Defendant also argued that there is no liability under Labor Code § 203 for violations of meal and
7 rest break claims alone. *Ling v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242; *Kirby v.*
8 *Immoos Fire Protection, Inc.* (2016) 53 Cal.4th 1244.

9 48. Class Counsel’s expert estimated Defendants’ maximum total exposure on the section
10 203 claim at approximately \$202,022 (76 terminated employees from June 24, 2017 to October 8,
11 2021 x 30 days x \$11.80 average rate of pay x 7.5 hours in a work day). (Gorlick Decl. at ¶ 14.)
12 Class Counsel believes it may be difficult to be awarded waiting time penalties given that
13 Plaintiff would need to show willfulness on top of proving the underlying wage and break claims.

14 **PAGA Penalties**

15 49. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
16 Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendant’s
17 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
18 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
19 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
20 for each aggrieved employee per pay period for the initial violation and two hundred dollars
21 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
22 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
23 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
24 percent allocated to the affected employees. The limitations period as for all penalties is one year
25 prior to the filing of the complaint.

26 50. The provisions of the Labor Code potentially triggering PAGA penalties in this case
27 include but are not limited to Labor Code §§ 201, 202, 203, 204, 218.6, 221, 226, 226(a), 226.7,
28 510, 512, 558, 1174, 1185, 1194, 1194.2, and 1197, Defendant asserted that if PAGA penalties

1 were mandatory, an employer's PAGA liability would be huge because of the possibility of
2 collecting multiple civil penalties for a single violation, and thus such penalties would almost
3 always dwarf the damages available under the causes of action proper. However, PAGA penalties
4 are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a
5 lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
6 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
7 arbitrary and oppressive, or confiscatory." *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App.
8 5th 773, 788 (2017), *rev. denied* (2018), (recognizing court's ability to reduce PAGA penalties).
9 Courts have held that situations similar to the current one (e.g. injuryless violations, technical
10 errors, and substantial compliance) should lead to reductions in penalties. *See Thurman v.*
11 *Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that
12 reduction was justified when employer "attempted to comply with the law"); *Fleming v. Covdien,*
13 *Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August
14 12, 2011) (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when
15 "employees suffered no injury" employers were "not aware" of the violation and "took prompt
16 steps to correct all violations once notified"). Defendant here maintained that it had a strong
17 argument that it would be unjust to award maximum PAGA penalties.

18 51. Furthermore, PAGA penalties are also derivative of each and every other claim, and
19 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
20 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be
21 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for
22 initial violations under the applicable statutes, because Defendant had never been notified of the
23 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to
24 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.
25 4th 1157, 1211-12. Therefore if Labor Commissioner - on whose behalf Plaintiff is prosecuting
26 this action for civil penalties - would not impose civil penalties in a case like this, the Court may
27 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
28 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil

1 penalties by 30 percent, finding that awarding the full penalties would have been “unjust” because
2 “...a court may award a lesser amount than the maximum civil penalty amount specified by this
3 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
4 an award that is unjust, arbitrary and oppressive, or confiscatory.”

5 52. Class Counsel’s expert estimated Defendants’ maximum total exposure on the PAGA
6 claim at approximately \$390,500 (\$100 x 3,905 number of paystubs from June 24, 2019 to
7 October 8, 2021). (Gorlick Decl. at ¶ 15.) However, Class Counsel notes that owing to the
8 discretionary nature of PAGA penalties and the foregoing case law it is unlikely the Court would
9 award the full penalty and that it would be substantially reduced. Class Counsel applied discounts
10 in light of the countervailing arguments with regard to the other causes of action, and moreover
11 the Court’s power to award “a lesser amount than the maximum civil liability.” The parties also
12 considered that the purpose of PAGA is to “achieve maximum compliance with state labor
13 laws,”. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the
14 settlement’s contemplated PAGA payment of \$25,000 appropriate.

15 **Unfair Business Practices**

16 53. Plaintiff pled this cause of action in order to augment their other causes of action and
17 aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations
18 on Plaintiff’ wage claims, which qualify as unfair business practices, to four years rather than the
19 three years provided by statute.

20 **Summary**

21 54. The foregoing discussion has sought to explain how the settlement amount is adequate
22 in light of the merits of Plaintiff’ case. It has done this by explaining the legal basis for each of
23 Plaintiff’ causes of action, summarizing the evidence that Class Counsel gathered in support of
24 those causes of action, and relating Defendant’s legal and factual arguments that worked to
25 derogate from the strength of Plaintiff’ case.

26 55. Class Counsel had to apply appropriate discounts in light of the facts and law as
27 discussed above. In addition, meal period liability exposure is limited by the fact that not all Class
28 Members worked on the same schedule and under the same supervisors, making the certification

1 of all Class Members across all locations less than a certainty. Thus, this settlement, like most
2 others, was the product of compromise. Because of these and other risks, a recovery of
3 \$750,000.00 under the Settlement Agreement is an excellent result. Under the Settlement, each of
4 the approximately 141 Class Members will receive on average, assuming they worked throughout
5 the class period \$3,196 after expenses.

6 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**
7 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**
8 **STATUS THROUGH TRIAL**

9 56. The next *Clark/Kullar* factors recognize that settlements take into consideration the
10 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
11 certification. Consequently, it is proper that trial courts should keep these considerations in mind
12 when judging the adequacy of class action settlements.

13 57. Further litigation of this case posed real risks for a number of reasons. First, there were
14 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
15 the previous section. In that section, it was observed that almost every cause of action was subject
16 to some unique indeterminacy of its own, and that the derivative causes of action were thus
17 subject to a double indeterminacy, both their own and those of the causes of action on which they
18 were based.

19 58. The parties disputed the effect of these and other issues on class certification and
20 decertification. Class Counsel maintained that there were several legal and factual questions at
21 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
22 the same policies and practices applied to all Class Members and therefore common questions
23 obtained and were likely to predominate over individual inquiries. Defendant disputed these
24 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
25 such as this one. Defendant also argued that its policies were compliant with the law, while
26 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
27 give rise to common questions amenable to certification. Thus the parties had set positions on the
28 propriety of certifiability and liability that did not admit of an easy resolution.

1 59. Finally, it is always preferable to reach a relatively early resolution of a dispute
2 because, in addition to what has already been said, such resolutions save time and money that
3 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial
4 there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this
5 case settled after further litigation, the settlement amount would have taken into account the
6 additional costs incurred, and there might have been less available for Class Members after all
7 was said and done. This is not just an abstract contention. The parties were moving into the phase
8 of this litigation where they would have had to depose a number of people such as managers,
9 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
10 been in the offing. The parties were also aware that a class action trial would be a complicated
11 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
12 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
13 benefits are not insignificant for anyone, especially given the current economic climate.
14 Consequently, the risk and expense of further litigation outweighed any benefit that might have
15 been gained otherwise.

16 **NOTICE TO AND REACTION OF CLASS MEMBERS**
17 **TO THE PROPOSED SETTLEMENT**

18 60. It is premature to address this factor now, at the preliminary approval stage; however,
19 some observations are in order. First, the notification procedure set out in the Settlement
20 Agreement provides the greatest likelihood that each and every Class Member will receive the
21 Notice of Class Action Settlement, Objection Form, Request for Exclusion Form, and Dispute
22 Form (“Notice Packet”), attached to the Settlement Agreement as Exhibits A, B, C, and D. Under
23 the Settlement Agreement, the Settlement Administrator will send the Notice Packet to each Class
24 Member via First Class U.S. mail. (Exh. 1, §41). Before mailing, the Settlement Administrator
25 will perform a search based on the National Change of Address Database for information to
26 update and correct for any known or identifiable address changes. (Exh. 1, §42) If the Notice
27 Packet is returned as non-deliverable on or before the Response Deadline and a new address is
28 obtained by way of a returned Notice Packet, then the Settlement Administrator will promptly

1 forward the original Notice Packet to the updated address via first-class regular U.S. mail,
2 indicating on the original packet the date of such re-mailing. (Exh. 1, §42) Thus, most, if not all,
3 Class Members will likely receive the Notice Packet.

4 61. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
5 claims involved, the terms of the settlement, and their options thereunder. They provide for a
6 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.
7 The efforts taken to ensure that Class Members receive the Notice Packet and are well informed
8 about the settlement augur a favorable response rate.

9 62. All Class Members will benefit because Defendant who has been sued is generally
10 more likely to comply with the law in the future. If a Class Member disputes the number of
11 workweeks stated for that Class Member in the Class Notice, the Class Member must ask the
12 Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury
13 the workweeks that the Class Member claims to have actually worked for Defendant during the
14 Class Period. (Exh. 1, §44). After consultation with Class Counsel and Defendant's Counsel, the
15 Settlement Administrator will make a determination of the Class Member's total workweeks
16 during the applicable period. *Id.*

17 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

18 63. The foregoing discussion establishes the fairness of the class-action settlement in the
19 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
20 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
21 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
22 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
23 Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal
24 uncertainty, particularly with regard to Plaintiff's claim for failure to provide proper meal periods.
25 From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class
26 Counsel believe that this case could not have settled on better terms under the circumstances.
27 Request therefore is made that the settlement be granted preliminary approval so that those
28 persons whom it was intended to benefit shall be afforded the opportunity to determine its

adequacy.

REQUEST FOR ATTORNEYS' FEES

64. Under the Settlement, Class Counsel also requests, without opposition from Defendant, an award of Attorneys Fees and Costs consisting of: (1) no more than Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) in Attorneys' Fees and (2) Seventeen Thousand Dollars and Zero Cents (\$17,000.00) for reimbursement of Class Counsel's costs. (Exh. 1, §33). This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the settlement if it is preliminarily approved.

65. My firm took this case on a contingent-fee basis against a business represented by a reputable defense firm. When we take contingent cases, we must pay careful attention to the economics involved or one bad case can destroy years of work. Accordingly, when we take contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the number of hours in a day is limited. Because of this, when we take on one particular matter, we are unable to take on other matters. When Class Counsel became involved in this case, we realized the time commitment that it would entail and we were forced to turn down matters that we otherwise should have been able to handle. In sum, this case claimed a significant portion of Class Counsel's time and attention throughout its pendency.

66. The requested fee is reasonable for the services provided to Class Members and for the benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would still be justified. Here, lodestar will substantially exceed the requested fees. Class Counsel will more fully brief the Court on its lodestar in the motion for final approval.

///

1 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

2 67. Plaintiff herein is entitled to reasonable service payment for her efforts and initiative in
3 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
4 apprising herself of her rights, deciding whether remedial action should be taken, how it should
5 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours
6 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only
7 her own rights but also those of their co-workers by filing a class action lawsuit.

8 68. The courage it took to stand up to Defendant by filing and litigating this action in this
9 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation
10 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable
11 resources, and Plaintiff justifiably fears the fact that she served as class representative in a wage
12 and hour class action will not be lost on a prospective employer who has to choose between an
13 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is
14 particularly real in the information age, where employers can, more easily than ever, perform
15 background checks of prospective employees, sometimes with the stroke of a key. It is common
16 for employers to screen employee candidates to determine whether they have ever filed suit, and
17 employee candidates who might be branded "litigious" are likely to be screened out of the
18 process. In fact, an entire industry has developed for providing employers with background
19 information on employee candidates.

20 69. But Plaintiff did not allow her fear of the potential repercussions of being class
21 representative to deter her from acting for the benefit of Class Members. To the contrary, Plaintiff
22 has been intimately involved in this case since its inception. She has devoted a substantial amount
23 of time to helping Class Counsel effectively develop and prosecute this action at every stage of
24 the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class
25 Counsel on numerous occasions to discuss every aspect of their case. Plaintiff provided Class
26 Counsel with information about Defendant and about the industry generally, reviewed documents,
27 identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length,
28 participated in the mediation process, monitored the progress of the litigation with Class Counsel,

1 and reviewed and signed the Settlement Agreement.

2 70. Plaintiff has spent a significant amount of time with Class Counsel detailing her
3 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this
4 action. She has diligently, adequately, and fairly represented Class Members, and has not placed
5 her interests above any member of the putative class. The payment to Plaintiff is intended to
6 recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate
7 based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by
8 bringing these violations to the attention of Class Counsel. She spent several hours answering
9 questions and providing information to Class Counsel throughout the pendency of this action. She
10 identified witnesses, explained to Class Counsel day to day business practices of Defendant with
11 regard to work schedules and meal breaks, etc. The parties are in agreement that Plaintiff is
12 entitled to an enhancement for her time and effort in this matter. This sort of payment to a class
13 representative has been a common feature of settlements negotiated by Class Counsel and has
14 been routinely approved by trial courts.

15 71. In light of the foregoing, Class Counsel believes that the Class Representative
16 Enhancement payment in the amount of Five Thousand Five Hundred Dollars and Zero Cents
17 (\$5,000.00) is fair and reasonable. This amount is a far cry from the \$50,000 of enhancement
18 awards to the two named plaintiff approved by the trial court in *Clark*. See *Clark, supra*, 175
19 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to ensure that
20 class representative are not overcompensated at the expense of the class, modest incentive awards
21 in employment class actions, such as the one here, are necessary not only to compensate class
22 representative for the time they spend in the case, but also, and more importantly, to encourage
23 aggrieved employees to challenge questionable employment practices notwithstanding the very
24 real consequences they may face.

25 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

26 72. The proposed Classes satisfy the criteria for certification of a settlement class under
27 California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to
28 the certification of the class for settlement purposes. In general, courts may take a proposed

1 settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor*
2 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in
3 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into
4 consideration the fact that the parties have settled their claims and stipulated to certification for
5 settlement purposes when assessing typicality and adequacy.

6 a. Numerosity. The putative classes are so numerous that joinder of all members is
7 impractical. Class Members are “all current and former non-exempt employees who worked for
8 Defendant in California at any time between June 24, 2016 and October 8, 2021.” There are
9 approximately 141 persons answering to this definition. Thus, there are a sufficient number of
10 Class Members to warrant certifying this as a class action for settlement purposes.

11 b. Ascertainability. The putative classes are defined in a manner that is precise,
12 objective, and ascertainable. The Class Members have already been identified by reference to
13 Defendant’s payroll and personnel records.

14 c. Typicality. A class representative’s claims are typical when they arise from the
15 same event, practice, or course of conduct that gives rise to the claims of other putative class
16 members, and if their claims rest on the same legal theories. The class representative’s claims
17 must be “typical” but not necessarily identical to the claims of other class members. It is
18 sufficient that the representative is similarly situated so that he or she will have the motive to
19 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
20 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been
21 the law in California that the class representative must have identical interests with the class
22 members.”). Thus, it is not necessary that the class representative should have personally incurred
23 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
24 (2001) 91 Cal.App.4th 224, 228.

25 Plaintiff’ claims are typical of Class Members’ claims because Plaintiff and Class
26 Members had the same basic job description and were subject to the same policies, practices and
27 working conditions that led to the violations described herein. Smith Decl. ¶¶ 2-3. They arose
28 from the same factual basis and are based on the same legal theories. Plaintiff was employed by

1 Defendants during the Class Period subject to the meal and rest break policies and pay practices
2 at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central issues of this
3 litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal
4 and rest periods etc.), which would arise if this were an individual action brought by Plaintiff,
5 apply to the other Class Members as well, and the answer to these questions would determine
6 Defendants' liability to the entire putative class. Thus, Plaintiff's claims are typical of the claims
7 of the putative class. Accordingly, the typicality requirement is satisfied. Smith Decl. ¶¶ 4-12.

8 d. Adequacy. A class representative must possess the same interest and suffer the
9 same injury as the class members. "To assure 'adequate' representation, the class representative's
10 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
11 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
12 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
13 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

14 Plaintiff does not have any conflicts with the class and in fact her interests are aligned
15 with those of the class. Smith Decl. ¶¶ 13-15. Because Plaintiff's claims are identical to those that
16 would be asserted by the unnamed Class Members were they before the Court, Plaintiff has every
17 interest in zealously representing the unnamed class members. Plaintiff has not shrunk from this
18 responsibility. Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating
19 this action and effecting a settlement. Furthermore, as detailed above, Class Counsel are
20 experienced in wage-and-hour litigation, especially class actions, and have zealously represented
21 the interests of the class in litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy
22 requirement is satisfied.

23 e. Commonality. Common questions of law or fact in this case predominate over
24 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged
25 failure to provide meal and rest periods, failure to pay minimum wages, failure to pay all wages
26 due to allegedly common and unlawful policies, failure to pay final wages when required, failure
27 to provide accurate wage statements, failure to pay employees on a timely basis, and largely
28 derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these

1 practices, including an alleged practice of failing to provide complete meal periods, related meal
2 period policies applicable to the class, and the alleged failure to provide corresponding premium
3 payments, that affected class members in the same way. All class members were employed during
4 the Class Period. Therefore, the operative complaint delineates a common course of conduct
5 applicable to all Class Members. Therefore, based on Class Counsel's investigation, the review of
6 the discovery produced by Defendant, and their discussions with Plaintiff, Plaintiff contends the
7 evidence supports their position that the employment practices and policies of Defendant's
8 business were consistent and uniform.

9 f. Predominance. Individualized issues do not predominate over the issues of law and
10 fact that are common to the class as a whole. The principal issues of controversy are whether
11 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
12 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
13 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
14 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for
15 work performed as non-exempt employees for Defendants. These issues are suitable for common
16 adjudication because all Class Members were subject to the same employment policies and
17 Plaintiff contends the practices applied uniformly to all Class Members. To the extent that Class
18 Members may have been affected by these policies to differing extents is not a factor weighing
19 against certification but rather is an issue to be dealt with during the damages phase of trial. *See*,
20 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 334 (2004) (it is not a bar to
21 certification that individual class members may ultimately need to itemize their damages.)

22 g. Superiority. Class resolution is superior to other available methods for the fair and
23 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
24 individually control the prosecution of separate actions. Although the injury resulting from
25 Defendant's policies and practices are real and significant, the cost of individually litigating each
26 such case against Defendant would easily exceed the value of any relief that could be obtained by
27 any one Class Member individually. If Class Members are forced to litigate their claims
28 individually this would result in about 141 individual actions against Defendant. Here, the

1 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
2 individual suit would prove uneconomical for potential plaintiff because litigation costs would
3 dwarf a potential recovery.

4 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
5 actions by Class Members against Defendant asserting similar claims as here. Furthermore,
6 Fresno County is a compelling forum for this action given that Defendant's location is in Fresno
7 County and numerous Class Members work in this County.

8 i. There are no serious manageability difficulties presented by preliminarily
9 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
10 that would remain is settlement administration and responding to possible objectors.

11 73. On March 10, 2023, Plaintiff uploaded the Joint Stipulation of Class Action Settlement
12 and the Memorandum of Points and Authorities in Support of Plaintiff's Motion for an Order
13 Preliminarily Approving the Class Action Settlement, Approving Notice of Class Action
14 Settlement, and Setting Hearing for Final Approval. A true and correct copy of the confirmatory
15 email from the LWDA is attached hereto as **Exhibit 6**.

16 74. Pursuant to the Settlement, the parties have agreed that any amounts that remain
17 uncashed and otherwise unclaimed shall be tendered to the California Rural Legal Aid ("CRLA").
18 I am not aware of any relationship between the CRLA and (A) any class representative or other
19 party, (B) any officer, director, or manager of any party, or (C) any attorney or law firm for any
20 party.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 10th day of March, at La Crescenta, California.

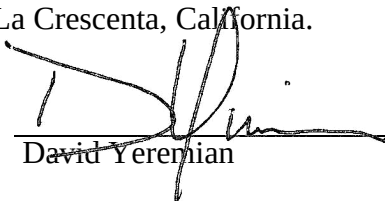
24 
25 _____
26 David Yerejian
27
28

EXHIBIT 1

1 DAVID YEREMIAN & ASSOCIATES, INC.

2 David Yeremian (SBN 226337)

3 David@yeremianlaw.com

4 Natalie Haritounian (SBN 324318)

5 natalie@yeremianlaw.com

6 535 N. Brand Blvd., Suite 705

7 Glendale, California 91203

8 Telephone: (818) 230-8380

9 Facsimile: (818) 230-0308

6 DAVTYAN LAW FIRM, INC.

7 Emil Davtyan (SBN 299363)

8 emil@davtyanlaw.com

9 880 E Broadway

10 Glendale, CA 91205

11 Telephone: (818) 875-2008

12 Facsimile: (818) 722-3974

10 Attorneys for Plaintiff Mary Jean Smith,
11 on behalf of herself and all others similarly situated

12 LAW OFFICES OF AMY R. LOVEGREN-TIPTON, APLC

13 Amy R. Lovegren-Tipton (SBN 258697)

14 Atpion@tiptonlegal.com

15 5703 N. West Avenue, Suite 103

16 Fresno, California 93711

17 Telephone: (559) 421-9137

18 Facsimile: (559) 921-4333

19 Attorneys for Defendant NOIA RESIDENTIAL SERVICES, INC.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF FRESNO**

19 MARY JEAN SMITH, an individual, on behalf
20 of herself and others similarly situated,

21 Plaintiff,

22 vs.

23 NOIA RESIDENTIAL SERVICES, INC., a
24 California corporation; and DOES 1 through 50,
25 inclusive,

26 Defendants.

Case No.: 20CECG01820

CLASS ACTION

Assigned for All Purposes To:

Hon. Kimberly Gaab

Dept.: 503

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: June 24, 2020

First Amended Complaint: September 11, 2020

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiff MARY JEAN SMITH (“Plaintiff”
3 or “Class Representative”), on behalf of herself and all others similarly situated, and Defendant
4 NOIA RESIDENTIAL SERVICES, INC. (“Defendant”) (collectively with Plaintiff, the
5 “Parties”).

6 DEFINITIONS

7 The following definitions are applicable to this Settlement Agreement.

8 Definitions contained elsewhere in this Settlement Agreement will also be effective:

9 1. “Action” means *Mary Jean Smith, et al. v. NOIA Residential Services, Inc., et*
10 *al.*, Fresno County Superior Court, Case No. 20CECG01820.

11 2. “Aggrieved Employees” means all current and former non-exempt employees
12 who worked for Defendant in California at a time during the PAGA limitations which is at any
13 time between June 4, 2019 and October 8, 2021.

14 3. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
15 Court for Class Counsel’s litigation and resolution of this Action.

16 4. “Class Counsel” means David Yeremian & Associates, Inc. and Davtyan Law
17 Firm.

18 5. “Class List” means a complete list of all Class Members that Defendant will
19 diligently and in good faith compile from its records and provide to the Settlement
20 Administrator within ten (10) days after Preliminary Approval of this Settlement. The Class
21 List will be formatted in Microsoft Office Excel and will include the following information
22 from Defendant’s records: each Class Member’s full name; last-known mailing address; Social
23 Security number; and dates of employment as a non-exempt employee in California during the
24 Class Period.

25 6. “Class Member(s)” or “Settlement Class” means all current and former non-
26 exempt employees who worked for Defendant in California at any time between June 24, 2016
27 and October 8, 2021. “Class Members” shall not include any person who submits a timely and
28 valid request for exclusion.

1 7. “Class Period” means the period from June 24, 2016 to October 8, 2021.

2 8. “Class Representative Enhancement Payment” means the amount approved by
3 the Court to be paid to Plaintiff in recognition of her contributions to the Action on behalf of
4 Class Members and Aggrieved Employees.

5 9. “Court” means the Superior Court of California, County of Fresno.

6 10. “Defendant” means NOIA RESIDENTIAL SERVICES, INC.

7 11. “Effective Date” means: (a) the date of entry of the Court’s order granting final
8 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an
9 objection was filed and later withdrawn; or (b) if an objection to the Settlement Agreement is
10 filed, then the date when the time expires to file an appeal of the Court’s grant of Final
11 Approval of the Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice
12 of Appeal of the Court’s grant of Final Approval of the Settlement Agreement, then the date the
13 appeal is finally resolved, with the final approval unaffected.

14 12. “Individual Settlement Payment” means each Class Member’s share of the Net
15 Settlement Amount.

16 13. “Gross Settlement Amount” is the amount of Seven Hundred Fifty Thousand
17 Dollars and Zero Cents (\$750,000.00), which is the maximum amount to be paid by Defendant
18 pursuant to this Settlement Agreement. The Gross Settlement Amount includes all Individual
19 Settlement Payments to Class Members, the Class Representative Enhancement Payment to
20 Plaintiff, Attorneys’ Fees and Costs to Class Counsel, the Settlement Administration Costs to
21 the Settlement Administrator and the PAGA Payment as specified in this Agreement. Defendant
22 shall pay the employer’s share of payroll taxes due on the portion of Settlement Payments
23 allocated to wages separately and in addition to the Gross Settlement Amount. The Parties
24 agree that Defendant will have no obligation to pay any amount in connection with this
25 Settlement Agreement apart from the Gross Settlement Amount and the employer’s share of
26 payroll taxes due on the portion of Settlement Payments allocated to wages, and that none of
27 the Gross Settlement Amount will revert to Defendant.

28 14. “Net Settlement Amount” means the Gross Settlement Amount, less the

1 Attorneys' Fees and Costs, Class Representative Enhancement Payments, Settlement
2 Administration Costs, and seventy-five percent (75%) of the PAGA Payment as specified in
3 this Agreement.

4 15. "Objection" means any written objection to this Settlement sent by a Class
5 Member to the Settlement Administrator as specified herein and in the Notice of Settlement.
6 An Objection to Settlement must be sent to the Settlement Administrator within the time
7 limitations set forth in this Stipulation.

8 16. "Notice of Class Action Settlement" means the notice of settlement, attached as
9 **Exhibit A**, to be mailed to all members of the Settlement Class upon Preliminary Approval.

10 17. "Notice Packet" means the Notice of Class Action Settlement attached as
11 **Exhibit A**, the Objection Form attached as **Exhibit B**, the Request for Exclusion Form attached
12 as **Exhibit C**, and the Dispute Form attached as **Exhibit D** to be mailed to all members of the
13 Settlement Class upon Preliminary Approval.

14 18. "PAGA" means the California Labor Code Private Attorneys General Act of
15 2004.

16 19. "PAGA Payment" means the payment made hereunder to the California Labor
17 and Workforce Development Agency and the Settlement Class Members for settlement of
18 claims for civil penalties under PAGA.

19 20. "PAGA Period" means the period from June 4, 2019 to October 8, 2021.

20 21. "Parties" means Plaintiff and Defendant collectively.

21 22. "Plaintiff" means MARY JEAN SMITH.

22 23. "Preliminary Approval" means the Court order granting preliminary approval of
23 the Settlement Agreement.

24 24. "Released Claims" means all causes of action and factual or legal theories that
25 were alleged in the operative complaints or that could have been alleged against Defendant
26 based on the facts contained in the operative complaints, including, but not limited to,
27 violations of California Labor Code sections 201, 202, 203, 204, 218.6, 221, 226, 226(a),
28 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2698, and 2699 *et seq.*, California Code

1 of Regulations, Title 8, section 11000 *et seq.*, and California Business & Professions Code §§
2 17200 to 17208, and the applicable IWC Wage Orders from the following claims for relief: (a)
3 failure to pay minimum, regular, or hourly wages, (b) failure to pay overtime wages or accurate
4 overtime wages, (c) failure to provide meal breaks and failure to pay premium pay for missed
5 meal breaks, (d) failure to provide rest breaks and failure to pay premium pay for missed rest
6 breaks, (e) failure to reimburse all necessary incurred business related expenses, (f) failure to
7 provide complete, accurate or properly formatted wage statements, (g) failure to timely pay
8 wages during employment or upon separation, (h) unfair business practices that could have
9 been premised on the claims, causes of action or legal theories of relief described above or any
10 of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (i)
11 all claims under the California Labor Code Private Attorneys General Act of 2004 that could
12 have been premised on the claims, causes of action or legal theories described above or any of
13 the claims, causes of action or legal theories of relief pleaded in the operative complaint; (j) any
14 other claims or penalties under the California Labor Code or other wage and hour laws pleaded
15 in the Action; and (k) all damages, penalties, interest and other amounts recoverable under said
16 claims, causes of action or legal theories of relief. The period of the Release shall extend to the
17 limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of
18 the Release. Defendant shall be entitled to a release of Released Claims which occurred during
19 the Class Period only during such time that the Settlement Class Member was classified as non-
20 exempt, and expressly excluding all other claims for vested benefits, wrongful termination,
21 unemployment insurance, disability, social security, workers' compensation, claims while
22 classified as exempt, and claims outside of the Class Period.

23 25. “Released Parties” means Defendant, and their past, present and/or future,
24 direct and/or indirect officers, directors, shareholder, employees, agents, principals, heirs,
25 representatives, accountants, auditors, attorneys, consultants, insurers, and their respective
26 successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents, if any.

27 26. “Request for Exclusion” means a timely written request by a Class Member to
28 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,

1 address, telephone number of the Class Member requesting exclusion; (ii) be signed by the
2 Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class
3 Member does not wish to be included in the Settlement; and (v) be postmarked on or before the
4 Response Deadline.

5 27. "Response Deadline" means the deadline by which Class Members must
6 postmark to the Settlement Administrator Requests for Exclusion or Objections to the
7 Settlement. The Response Deadline will be forty-five (45) calendar days from the initial
8 mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the
9 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
10 extended to the next day on which the U.S. Postal Service is open.

11 28. "Settlement Administrator" means CPT Group, Inc. or any other third-party
12 class action settlement administrator approved by the Parties and the Court for the purposes of
13 administering this Settlement. The Parties each represent that they do not have a financial
14 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
15 Administrator that could create a conflict of interest.

16 29. "Settlement Administration Costs" includes all costs payable to the Settlement
17 Administrator for administering this Settlement, including, but not limited to, printing,
18 distributing, and tracking notice and other documents for this Settlement, tax reporting,
19 distributing all payments to be made pursuant to this Settlement, and providing necessary
20 reports and declarations, as requested by the Parties. After conference and consultation with the
21 Settlement Administrator, no more than Six Thousand Dollars and Zero Cents (\$6,000.00) will
22 be allocated to Settlement Administration.

23 30. "Workweeks" means the number of calendar weeks that the Class Member
24 worked as a non-exempt employee in California during the Class Period.

25 31. "Workweek Value" means the value of each compensable Workweek, as
26 determined by the formula set forth in herein.

27 **TERMS OF AGREEMENT**

28 Plaintiff, on behalf of herself and the Settlement Class, and Defendant agree as

1 follows:

2 32. Funding of the Gross Settlement Amount. Within 30 business days after the
3 Effective Date, Defendant will deposit half of the Gross Settlement Amount into a Qualified
4 Settlement Fund, with the Settlement Administrator. Within 6 months of Defendant depositing
5 half of the Gross Settlement Amount into the Qualified Settlement Fund, Defendant will
6 deposit the remaining half. The Gross Settlement Amount will be used to pay: (i) Individual
7 Settlement Amounts; (ii) the Class Representative Enhancement Payment to Plaintiff; (iii)
8 Attorneys' Fees and Costs; (iv) the PAGA Payment; and the (v) Settlement Administration
9 Costs.

10 33. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees
11 and Costs of not more than Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00)
12 in attorney's fees and not more than Seventeen Thousand Dollars and Zero Cents (\$17,000.00)
13 in costs, and Defendant agree not to oppose such application. All Attorneys' Fees and Costs will
14 be paid from the Gross Settlement Amount. Plaintiff and Class Counsel will not have the right
15 to revoke this Settlement in the event the Court fails to approve the amount of Attorneys' Fees
16 and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and Costs not awarded
17 to Class Counsel will be added to the Net Settlement Amount.

18 34. Class Representative Enhancement Payment. Plaintiff will apply to the Court for
19 a Class Representative Enhancement Payment of not more than Seven Thousand Five Hundred
20 Dollars and Zero Cents (\$7,500.00) for her effort and work in prosecuting the Action on behalf
21 of Class Members and Aggrieved Employees and Defendant agree not to oppose such
22 application. The Class Representative Enhancement Payment, which will be paid from the Gross
23 Settlement Amount, will be in addition to Plaintiff's right to an Individual Settlement Payment
24 pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and all
25 applicable taxes on the payments made pursuant to this paragraph and will hold Defendant
26 harmless from any claim or liability for taxes, penalties, or interest arising as a result of the
27 payments. Plaintiff will not have the right to revoke this Settlement in the event the Court fails to
28 approve the amount sought by Plaintiff as a Class Representative Enhancement Payment. Any

1 portion of the Class Representative Enhancement Payment not awarded to the Class
2 Representative will be added to the Net Settlement Amount.

3 35. Settlement Administration Costs. The Settlement Administrator will be paid for
4 the reasonable costs of administration of the Settlement and distribution of payments. These
5 costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the
6 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
7 preparing and distributing Notices of Class Action Settlement, calculating and distributing all
8 payments to be made pursuant to the Settlement, and providing necessary reports and
9 declarations. Class Counsel obtained a “not to exceed” quote from the Settlement Administrator
10 to complete the administration for Six Thousand Dollars and Zero Cents (\$6,000.00). The
11 Settlement Administrator’s “not to exceed” quote will represent the Settlement Administrator’s
12 agreement that, based on the class size and distributions under the terms of this Settlement, the
13 costs for administration of the terms of this Settlement will not exceed the specified amount.
14 All of the Settlement Administration Costs shall be paid from the Gross Settlement Amount
15 upon completion of all duties required to be performed by the Settlement Administrator under
16 the terms of this Settlement, or as otherwise required by the Court, subject to the “not to
17 exceed” quote from the Settlement Administrator. The Settlement Administrator will set up the
18 Qualified Settlement Fund.

19 36. PAGA Payment. Twenty-five Thousand Dollars and Zero Cents (\$25,000.00)
20 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties
21 under PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of such
22 \$25,000.00 PAGA Payment, or \$18,750.00, to the LWDA. Twenty-five (25%) of the
23 \$25,000.00 PAGA Payment, or \$6,250.00, will be included in the Net Settlement Amount and
24 distributed to Settlement Class Members as described in this Agreement. Each Settlement Class
25 Member’s pro rata share of that \$6,250.00 will be part of his or her Individual Settlement
26 Payment.

27 37. Individual Settlement Payment Calculations. Individual Settlement Payments
28 will be calculated and apportioned from the Net Settlement Amount based on the number of

1 Workweeks a Class Member worked during the Class Period as a non-exempt employee in
2 California. Specific calculations of Individual Settlement Payments will be made as follows:

3 34(a). The Settlement Administrator will calculate the total number of
4 Workweeks worked by each Class Member as a non-exempt employee in California during the
5 Class Period and the aggregate total number of Workweeks worked by all Class Members as
6 non-exempt employees in California during the Class Period.

7 34(b). To determine each Class Member's estimated "Individual Settlement
8 Payment," the Settlement Administrator will use the following formula: The Net Settlement
9 Amount will be divided by the aggregate total number of Workweeks, resulting in the
10 Workweek Value. Each Class Member's "Individual Settlement Payment" will be calculated by
11 multiplying each individual Class Member's total number of Workweeks by the Workweek
12 Value.

13 34(c). The entire Net Settlement Amount will be disbursed as Individual
14 Settlement Payments to Class Members. If there are any valid and timely Requests for
15 Exclusion from members of the Settlement Class, the Settlement Administrator shall
16 proportionately increase the Individual Settlement Payment for each Class Member according
17 to the number of Workweeks worked, so that the amount actually distributed to the Settlement
18 Class equals 100% of the Net Settlement Amount.

19 38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
20 Class Members under this Settlement, as well as any other payments made pursuant to this
21 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
22 which any Class Members may be eligible, including, but not limited to: (i) profit-sharing
23 plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick
24 leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention
25 that this Settlement Agreement will not affect any rights, contributions, or amounts to which
26 any Class Members may be entitled under any benefit plans.

27 39. Settlement Administration Process. The Parties agree to cooperate in the
28 administration of the settlement and to make all reasonable efforts to control and minimize the

costs and expenses incurred in administration of the Settlement.

40. Delivery of the Class List. Within ten (10) calendar days of entry of the Court's Order Granting Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

41. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

42. Confirmation of Contact Information in the Class List and Undeliverable Notices. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using an Accurint search/skip-trace and will then perform a single re-mailing.

43. Notices of Class Action Settlement. All Class Members will be mailed a Notice of Class Action Settlement in the form attached as Exhibit A or as provided by Court order, an Objection Form in the form attached as Exhibit B or as provided by Court order, a Request For Exclusion Form in the form attached as Exhibit C or as provided by Court order, and a Dispute Form in the form attached as Exhibit D or as provided by Court order.

44. Disputed Information on Notices of Class Action Settlement. Class Members will have an opportunity to dispute the information provided in their Notices of Class Action Settlement. Any Class Member wishing to dispute the information provided in their Class Notice shall mail the Dispute Form to the Settlement Administrator by the Response Deadline. To the extent Class Members dispute their employment dates or the number of Workweeks, Class Members may produce evidence to the Settlement Administrator showing that such information is

1 inaccurate. The Settlement Administrator will advise the Parties of such dispute and allow
2 Defendants five (5) business days to respond with any additional information or records.
3 Defendants' records will be presumed correct, but the Settlement Administrator will evaluate the
4 evidence submitted by the Class Member and will make a decision as to the merits of the dispute. If
5 the parties cannot reach an amicable resolution, the class member may be allowed to bring the
6 dispute for judicial resolution. Class Counsel shall file with the Court all disputes submitted by
7 Class Members, the evidence submitted, and the resolution of those disputes. The Court shall have
8 the right to review any decision made by the Settlement Administrator regarding a claim dispute

9 45. Requests for Exclusion. Any Class Member wishing to opt-out from the
10 Settlement Agreement must sign and return the Request for Exclusion Form, postmarked within
11 the Response Deadline to the Settlement Administrator. The postmark date will be the exclusive
12 means to determine whether a Request for Exclusion has been timely submitted. The Parties
13 and their counsel will not solicit or encourage any Class Member, directly or indirectly, to opt
14 out of the Settlement Agreement. More specifically, a Class Member may request to be
15 excluded from the effect of this Agreement, and any payment of amounts under this Agreement
16 by timely mailing a Request for Exclusion Form to the Settlement Administrator stating that the
17 Class Member wants to be excluded from this Action. The Class Member must include their
18 name, address, and signature on the Request for Exclusion Form. To be valid and timely, the
19 request to be excluded must be postmarked by the Response Deadline date that will be
20 specified in the Class Notice (no less than forty five (45) days from the initial mailing of the
21 Class Notice by the Settlement Administrator). A Class Member who properly submits a valid
22 and timely request to be excluded from the Action will not receive any payment of any kind in
23 connection with this Agreement or this Action, will not be bound by or receive any benefit of
24 this Agreement, and will have no standing to object to the Settlement. Class Members who do
25 not timely request exclusion will be bound by the releases herein and receive an individual
26 settlement payment ("Participating Class Members"), and their request for exclusion will be
27 defective. A request for exclusion must be mailed to the Settlement Administrator at its address
28 to be provided in the Class Notice, and the Settlement Administrator will promptly transmit the

1 requests for exclusion to counsel for the parties. Class Counsel shall file with the Court all
2 requests for exclusion submitted by Class Members.

3 46. Defective Submissions. If a Class Member's Request for Exclusion is defective
4 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
5 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
6 (3) business days of receiving the defective submission to advise the Class Member that his or
7 her submission is defective and that the defect must be cured to render the Request for
8 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)
9 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
10 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked within
11 that period, it will be deemed untimely.

12 47. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
13 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
14 timely and valid Request for Exclusion will be bound by all of its terms, including those
15 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
16 it grants final approval of the Settlement.

17 48. Objection Procedures. Any Class Members wishing to object to the Settlement
18 must sign and return the Objection Form, postmarked within the Response Deadline to the
19 Settlement Administrator or by appearing at the hearing for Final Approval. The postmark date
20 will be the exclusive means to determine whether an Objection has been timely submitted. The
21 Class Member must include their name, address, and signature on the Objection Form. The
22 Class Member must also list the reasons for objecting to the Settlement. The Settlement
23 Administrator will promptly provide any objections to the parties' counsel upon receiving
24 them. Class Counsel shall file with the Court all objections submitted by Class Members.
25 Settlement Class Members may also have a right to have their objections heard at the Final
26 Approval/Settlement Fairness Hearing. Class Counsel will not represent any Class Members
27 with respect to any such Objections to this Settlement, and any Class Members who request
28 exclusion from the Settlement will not have standing to object to it.

1 49. Settlement Administrator Reports. The Settlement Administrator will provide
2 Defendant' counsel and Class Counsel a weekly report of the number of Class Members who
3 have submitted valid Requests for Exclusion, Objections, and disputes regarding Workweeks
4 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties
5 any updated reports regarding the administration of the Settlement Agreement as needed or
6 requested.

7 50. Distribution and Timing of Payments. Within 25 days of the Effective Date, and
8 after Defendant has fully funded the Qualified Settlement Fund with the Gross Settlement
9 Amount, the Settlement Administrator will issue payments to: (i) all Class Members who have
10 not submitted a valid and timely Request for Exclusion, including any Class Member whose
11 notice was returned as undeliverable; (ii) Plaintiff; (iii) Class Counsel; and (iv) the LWDA. The
12 Settlement Administrator will also issue a payment to itself for Court-approved services
13 performed in connection with the Settlement. The Settlement Administrator will pay Individual
14 Settlement Payments from the Net Settlement Amount to all Participating Class Members. The
15 Settlement Administrator will do so by sending a check in the appropriate amount to the Class
16 Member at the address indicated in the list of Class Member names and addresses provided by
17 Defendant, or as subsequently determined by the Settlement Administrator to be correct.

18 51. Un-cashed Settlement Checks. Class Members will receive checks for their
19 Individual Settlement Payments. Checks will remain negotiable for 180 days ("Check-Cashing
20 Deadline"). Any check not cashed within 180 calendar days will be void. The money from the
21 uncashed checks shall be distributed by the Settlement Administrator, in accordance with
22 California Code of Civil Procedure section 384. Any amounts from the settlement checks that
23 remain uncashed and otherwise unclaimed shall be tendered to the California Rural Legal Aid
24 ("CRLA").

25 52. Certification of Completion. Upon completion of administration of the
26 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
27 such completion to the Court and counsel for all Parties.

28 53. Allocation of Individual Settlement Payments. All Individual Settlement

1 Payments will be allocated as follows: (a) twenty percent (20%) as wages and (b) eighty
2 percent (80%) as penalties and interest. The Settlement Administrator will be responsible for
3 issuing to claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the
4 portions allocated to penalties.

5 54. Administration of Taxes by the Settlement Administrator. The Settlement
6 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel
7 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
8 Settlement Administrator will also be responsible for forwarding all taxes and penalties to the
9 appropriate government authorities as may be required by law.

10 55. Tax Liability. Defendant make no representation as to the tax treatment or legal
11 effect of the payments called for hereunder, and Plaintiff and Class Members are not relying on
12 any statement, representation, or calculation by Defendant or by the Settlement Administrator
13 in this regard. Plaintiff and Class Members understand and agree that they will be solely
14 responsible for the payment of any taxes and penalties assessed on the payments described
15 herein and will defend, indemnify, and hold Defendant free and harmless from and against any
16 claims resulting from treatment of such payments as non-taxable damages.

17 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
18 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
19 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
20 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
21 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
22 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
23 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
24 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
25 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
26 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
27 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
28 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS

1 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
2 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
3 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
4 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
5 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
6 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
7 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
8 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
9 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
10 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
11 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
12 AGREEMENT.

13 57. No Prior Assignments. The Parties and their counsel represent, covenant, and
14 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
15 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
16 demand, action, cause of action or right herein released and discharged.

17 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not
18 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final
19 for any other reason, then this Settlement Agreement, and any documents generated to bring it
20 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
21 this Settlement Agreement will likewise be treated as void from the beginning, it will be of no
22 force or effect whatsoever, it will not be referred to or used for any purpose whatsoever, and the
23 negotiation, terms and entry of it shall remain subject to the provisions of California Evidence
24 Code §§ 1119 and 1152.

25 Defendant deny all of the claims and allegations asserted in the Action (as defined
26 herein). Defendant have agreed to resolve this Action via this Stipulation, but to the extent this
27 Stipulation is deemed void or does not take effect, Defendant do not waive, but rather expressly
28 reserves, all rights to challenge all such claims and allegations in the Action upon all procedural

1 and factual grounds, including without limitation the ability to challenge suitability for class
2 treatment or representative adjudication on any grounds or to assert any and all defenses or
3 privileges. The Class Representative and their counsel agree that Defendant retain and reserve
4 these rights. In particular, the Class Representative and their counsel waive and agree not to
5 argue or to present any argument that Defendant would be estopped from contesting class
6 certification because it has entered into this Stipulation.

7 59. Tolerance of Opt-Outs. Defendant retain the right, in the exercise of their sole
8 discretion, to nullify the settlement within thirty (30) days after expiration of the opt out period, if
9 more than one hundred and six (106) Class Members opt out of this settlement.

10 60. Escalator. This settlement is based on Defendant' representation that there are
11 approximately 157 Class Members and approximately 20,562 workweeks as of August 9, 2021. At
12 the time of preliminary approval, if the number of workweeks increases by more than 10% upon
13 confirmation of the workweeks, then there will be a pro rata adjustment to the Gross Settlement
14 Amount which shall automatically increase in proportion to the increased percentage of workweeks.

15 61. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court
16 to request the Preliminary Approval of the Settlement Agreement, and the entry of a
17 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
18 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)
19 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
20 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
21 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
22 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
23 proposed Notice of Class Action Settlement.

24 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
25 the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement,
26 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
27 conducted to determine the Final Approval of the Settlement Agreement along with the
28 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative

1 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration
2 Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30)
3 days after the Response Deadline. Class Counsel will be responsible for drafting all documents
4 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
5 attorneys' fees and costs application to be heard at the final approval hearing.

6 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
7 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
8 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
9 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
10 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
11 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
12 Agreement.

13 64. General Release by Plaintiff. In consideration for the consideration set forth in
14 this Agreement, Plaintiff, for herself, their heirs, successors and assigns, does waive, release,
15 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
16 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
17 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not
18 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
19 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
20 personal injury claims, emotional distress claims, invasion of privacy claims, defamation
21 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,
22 state or other governmental statute, law, regulation or ordinance, including any claims arising
23 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,
24 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
25 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
26 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
27 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the
28 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &

1 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state
2 or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waive
3 and relinquish any and all claims, rights, or benefits that they may have under California Civil
4 Code § 1542, which provides as follows:

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

12 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
13 which they now know or believe to exist, but they expressly agree to fully, finally and forever
14 settle and release any and all claims against the Released Parties, known or unknown, suspected
15 or unsuspected, which exist or may exist against Released Parties at the time of execution of
16 this Agreement, including, but not limited to, any and all claims relating to or arising from
17 Plaintiff's employment with Defendant. The Parties further acknowledge, understand and
18 agree that this representation and commitment is essential to the Agreement and that this
19 Agreement would not have been entered into were it not for this representation and
20 commitment.

21 65. Release by All Settlement Class Members. Plaintiff and all Class Members who
22 do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or
23 her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and
24 finally release and discharge the Released Parties from any and all of the Released Claims for
25 the entirety of the Class Period. This waiver and release will be final and binding on the
26 Effective Date and will have every preclusive effect permitted by law. Plaintiff and the
27 Settlement Class Members may hereafter discover facts or legal arguments in addition to or
28 different from those they now know or currently believe to be true with respect to the Released

1 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the
2 scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the
3 Settlement Class Members shall be deemed to have, and by operation of the final judgment
4 approved by the Court, shall have, fully, finally, and forever settled and released all of the
5 Released Claims. The parties understand and specifically agree that the scope of the release
6 described in this Paragraph: is a material part of the consideration for this Agreement; was
7 critical in justifying the agreed upon economic value of this settlement and without it
8 Defendant would not have agreed to the consideration provided; and is narrowly drafted and
9 necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of
10 claims that were or could have been alleged based on the facts, causes of action, and legal
11 theories contained in the operative complaint in the Action.

12 66. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
13 include the terms set forth in any attached Exhibits, which are incorporated by reference as
14 though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of
15 the Settlement.

16 67. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or
17 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the
18 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any
19 person or entity, except potential class members and as shall be contractually required to
20 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff
21 and Class Counsel agree not to issue press releases, communicate with, or respond to any
22 media or publication entities, publish information in manner or form, whether printed or
23 electronic, on any medium or otherwise communicate, whether by print, video, recording or
24 any other medium, with any person or entity concerning the Settlement, including the fact of
25 the Settlement, its terms or contents and the negotiations underlying the Settlement, except as
26 shall be contractually required to effectuate the terms of the Settlement.

27 68. No Unalleged Claims. Except for those claims brought forth under *Mary Jean*
28 *Smith, et al. v. NOIA Residential Services, Inc., et al.*, Fresno County Superior Court, Case No.

20CECG01820 to the extent they are not covered under the Released Claims, Plaintiff and Class Counsel represent that they are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the operative complaints in this Action. Plaintiff and Plaintiff's Counsel will further represent that, other than the instant Action, they have no current intention of asserting any other claims against Defendant in any judicial or administrative forum. Plaintiff and Plaintiff's Counsel will further represent that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties acknowledge, understand and agree that the representations described in this paragraph are essential to the Settlement Agreement and that this Settlement Agreement would not have been entered into were it not for this representation.

69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

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

71. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

72. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

73. Headings. The headings contained in this Settlement Agreement are for convenience and reference purposes only and will not be given weight in its construction.

74. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts.

1 All executed counterparts and each of them, including facsimile and scanned copies of the
2 signature page, will be deemed to be one and the same instrument provided that counsel for the
3 Parties will exchange among themselves original signed counterparts.

4 75. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
5 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
6 and have arrived at this Settlement after arm's-length negotiations and in the context of
7 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
8 further acknowledge that they are each represented by competent counsel and that they have
9 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
10 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
11 and the reasonableness of the Settlement and the Court may, in its discretion, contact the
12 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
13 reasonable.

14 76. Invalidity of Any Provision. Before declaring any provision of this Settlement
15 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
16 extent possible consistent with applicable precedents so as to define all provisions of this
17 Settlement Agreement valid and enforceable.

18 77. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
19 to class certification for purposes of this Settlement only; except, however, that Plaintiff or
20 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
21 request from the Court, and either party may appeal any court order that materially alters the
22 Settlement Agreement's terms.

23 78. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
24 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
25 litigation. In entering into this Settlement, Defendant do not admit, and specifically deny, that
26 they violated any federal, state, or local law; violated any regulations or guidelines promulgated
27 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
28 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or

1 engaged in any other unlawful conduct with respect to its employees. Neither this Settlement,
2 nor any of its terms or provisions, nor any of the negotiations connected with it, will be
3 construed as an admission or concession by Defendant of any such violations or failures to
4 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
5 this Settlement, this Settlement and its terms and provisions will not be offered or received as
6 evidence in any action or proceeding to establish any liability or admission on the part of
7 Defendant or to establish the existence of any condition constituting a violation of, or a non-
8 compliance with, federal, state, local or other applicable law.

9 The Parties understand and acknowledge that this Settlement Agreement constitutes a
10 compromise and settlement of disputed claims. No action taken by the Parties whether
11 previously or in connection with the negotiations or proceedings connected with the Settlement
12 or this Agreement shall be deemed or construed to be an admission of the truth or falsity of any
13 allegations, claims, or defenses heretofore made, or an acknowledgment or admission by any
14 party of any fact, fault, liability, or wrongdoing of any kind whatsoever.

15 Neither the Settlement, nor any act performed or document executed pursuant to or in
16 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission
17 of, or evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any
18 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be
19 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in
20 the Action or in any proceeding in any court, administrative agency or other tribunal; or
21 construed as an admission by Plaintiff regarding the validity of any allegation or claim asserted
22 in this Action or that Plaintiff has waived any allegation or claim asserted in the Action.

23 79. Waiver. No waiver of any condition or covenant contained in this Settlement or
24 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
25 constitute a further waiver by such party of the same or any other condition, covenant, right or
26 remedy.

27 80. Enforcement Action. In the event that one or more of the Parties institutes any
28 legal action or other proceeding against any other Party or Parties to enforce the provisions of

1 this Settlement or to declare rights and/or obligations under this Settlement, the successful
2 Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable
3 attorneys' fees and costs, including expert witness fees incurred in connection with any
4 enforcement actions.

5 81. Mutual Preparation. The Parties have had a full opportunity to negotiate the
6 terms and conditions of this Settlement. Accordingly, this Settlement will not be construed
7 more strictly against one party than another merely by virtue of the fact that it may have been
8 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
9 negotiations between the Parties, all Parties have contributed to the preparation of this
10 Settlement.

11 82. Representation By Counsel. The Parties acknowledge that they have been
12 represented by counsel throughout all negotiations that preceded the execution of this
13 Settlement, and that this Settlement has been executed with the consent and advice of counsel.
14 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
15 Settlement Agreement.

16 83. All Terms Subject to Final Court Approval. All amounts and procedures
17 described in this Settlement Agreement herein will be subject to final Court approval.

18 84. Cooperation and Execution of Necessary Documents. All Parties will cooperate
19 in good faith and execute all documents to the extent reasonably necessary to effectuate the
20 terms of this Settlement Agreement.

21 85. Binding Agreement. The Parties warrant that they understand and have full
22 authority to enter into this Settlement, and further intend that this Settlement will be fully
23 enforceable and binding on all parties, and agree that it will be admissible and subject to
24 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
25 provisions that otherwise might apply under federal or state law.

26 ///

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SO AGREED AND STIPULATED.

DATED: May 31, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

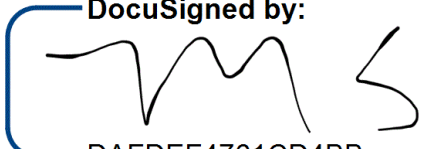
By _____
David Yeremian
Natalie Haritoonian
Attorneys for Plaintiff MARY JEAN SMITH
and all others similarly situated

DATED: May ___, 2022

LAW OFFICES OF AMY R. LOVEGREN-
TIPTON, APLC

By _____
Amy R. Lovegren-Tipton
Attorneys for Defendant NOIA
RESIDENTIAL SERVICES, INC.

²⁷
DATED: May ___, 2022

DocuSigned by:

By _____ DAFDEF4761CD4BB...
Plaintiff Mary Jean Smith

DATED: May ___, 2022

NOIA RESIDENTIAL SERVICES, INC.

By _____
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Title:

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DATED: May __, 2022

DAVID YEREMIAN & ASSOCIATES, INC.

By _____
David Yeremian
Natalie Haritounian
Attorneys for Plaintiff MARY JEAN SMITH
and all others similarly situated

DATED: May 31, 2022

LAW OFFICES OF AMY R. LOVEGREN-
TIPTON, APLC

By  _____
Amy R. Lovegren-Tipton
Attorneys for Defendant NOIA
RESIDENTIAL SERVICES, INC.

DATED: May __, 2022

By _____
Plaintiff Mary Jean Smith

DATED: May 31, 2022

NOIA RESIDENTIAL SERVICES, INC.

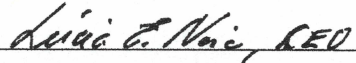
By  _____
Name:
Title: NRS CEO

EXHIBIT A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING DATE FOR COURT APPROVAL**

Mary Jean Smith, et al. vs. NOIA Residential Services, Inc., et al., Case No. 20CECG01820

As a current or former non-exempt employee of NOIA Residential Services, Inc. who worked in California, you may be entitled to receive money from a class action settlement.

Admin ID: <<Admin ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip Code>>

Please provide current address (if different) here:

*The Fresno County Superior Court has authorized this Class Notice.
This is not a solicitation from a lawyer.*

IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF NOIA RESIDENTIAL SERVICES, INC. WHO WORKED IN CALIFORNIA FROM JUNE 24, 2016 THROUGH OCTOBER 8, 2021, YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT

- A proposed settlement of \$750,000.00 (the “Gross Settlement Amount”) will be used to pay claims to: current and former non-exempt employees of NOIA Residential Services, Inc., who worked in California from June 24, 2016 through October 8, 2021 (such periods of time, the “Class Period” and such employees, the “Class Members”).
- The settlement resolves a lawsuit entitled *Mary Jean Smith, et al. vs. NOIA Residential Services, Inc., et al.*, Case No. 20CECG01820 (the “Lawsuit”) over whether NOIA Residential Services, Inc. properly paid employees for all hours worked, provided employees meal and rest periods, and other legal consequences that would follow from not doing so, provided accurate wage statements, paid all wages upon termination, reimbursed employees for necessary business expenses, timely paid all wages, and kept required payroll records. This settlement avoids the costs and risks from continuing the Lawsuit, pays money to persons like you, and releases NOIA Residential Services, Inc.
- The Court has not made a determination of the validity of the claims in the Lawsuit. NOIA Residential Services, Inc. denies any and all liability arising from any of the claims and contends that at all relevant times it properly compensated all employees and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of workweeks worked, rounded up to the nearest full workweek, during the Class Period.
- **PLEASE READ THIS CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

You worked a total number of <<Work Weeks>> during the Class Period.

Based on your workweeks it is expected that your gross settlement payment before payroll taxes is approximately <<EstISP>>

Each settlement payment will be allocated as follows for tax purposes: twenty percent as wages, to be reported on an IRS W-2, and which will be reduced for the Class Member's share of taxes and withholdings; and eighty percent as interest, penalties, and liquidated damages, which portion shall be reported on an IRS Form 1099, and which will not be subject to reduction for taxes and withholdings.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	If you do not do anything, you will receive a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. You will have 180 days to cash the check. If you do not cash the check, the money will revert to the California Rural Legal Aid, but you will still be deemed to have released your claims.
OPT OUT	If you opt out, you will not receive any payment and will retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. You may opt out by following the procedures set forth below.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court. You may object by following the procedures set forth below.
OBJECT TO THE WORKWEEK CALCULATION	If you believe that you worked a different amount of workweeks than identified above, you may object to that calculation by following the procedures set forth below.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. Regardless of whether you timely file and serve a written objection, you may ask to speak about your objection at the hearing. You can also send a letter to the Settlement Administrator, CPT Group, Inc., providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Lawsuit and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Lawsuit, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the Fresno County Superior Court. The person who sued is called "Plaintiff" and the organization she sued is called "Defendant."

2. What is the Lawsuit about?

The Representative Plaintiff, Mary Jean Smith, sued NOIA Residential Services, Inc., regarding allegations that they violated of the California Labor Code, the California Business and Professions Code, including causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Reimburse Business Expenses Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code § 221; (8) Violation of Labor Code § 203; (9) Violation of Labor Code § 204; (10) Violation of Business & Professions Code § 17200, *et seq.*; and (11) Penalties Pursuant to Labor Code § 2698, *et seq.*

3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Representative Plaintiff won at trial. There has been no trial in this case and the Court has not decided in favor of the Representative Plaintiff or NOIA Residential Services, Inc. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Representative Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

4. What should I do?

You can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

5. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under Section IV of the parties' Joint Stipulation of Class Settlement (which is available for review), the remainder will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

Under the proposed Settlement, NOIA Residential Services, Inc will pay \$750,000 to fully and finally resolve all claims in the Action (the "Gross Settlement Amount"). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the "Net Settlement Amount") will be the Gross Settlement Amount, minus the following amounts: (a) Settlement Administration Costs, which shall not exceed \$6,000.00; (b) enhancement payments to the Plaintiff not to exceed \$7,500 for her work and efforts in prosecuting this case; (c) Class Counsel's attorney's fees not to exceed one-third of the Gross Settlement Amount, or \$250,000; (d) reimbursement of Class Counsel's actual litigation costs and expenses in an amount not to exceed \$17,000; and (e) payment of \$25,000 to the Labor and Workforce Development Agency for its share of the penalties under the PAGA ("LWDA Payment"). The attorneys' fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to Court approval. The Net Settlement Amount will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

If you do not dispute your workweek calculation, and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

6. When would I get my payment?

The Court will hold a hearing on **[ENTER DATE AND TIME]** to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at **1-XXX-XXX-XXXX**, or contact Class Counsel (see below for Class Counsel's contact information.). *Please be patient.*

7. What am I releasing?

Upon the Court's final approval of the settlement, and except as to such rights or claims as may be created by the settlement, Plaintiffs and Class Members who have not effectively opted-out of the settlement as described below, fully release NOIA Residential Services, Inc. and its past, present and/or future, direct and/or indirect, officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents if any, without limitation ("Released Parties") of all causes of action and factual or legal theories that were alleged in the operative complaints or that could have been alleged against Defendant based on the facts contained in the operative complaints, including, but not limited to, all of the following claims for relief: (a) failure to pay minimum, regular, or hourly wages, (b) failure to pay overtime wages or accurate overtime wages, (c) failure to provide meal breaks and failure to pay premium pay for missed meal breaks, (d) failure to provide rest breaks and failure to pay premium pay for missed rest breaks, (e) failure to provide complete, accurate or properly formatted wage statements, (f) failure to timely pay wages during employment or upon separation, (g) failure to maintain accurate records, (h) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (i) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (j) any other claims or penalties under the California Labor Code or other wage and hour laws pleaded in the Action; and (k) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief. The time period covered by this release is June 24, 2016 through October 8, 2021.

8. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. You will have 45 days from the date of mailing of this Class Notice to opt out of this settlement. To do so, you must fill out the Request for Exclusion Form with your name, address, and signature. You must sign and return the Request for Exclusion Form and it must be mailed to the Settlement Administrator, *Smith v. NOIA Residential Services, Inc.*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, California 92606, **1-XXX-XXX-XXXX**, and be postmarked no later than **[ENTER DATE]**, or it will not be considered and you will be bound by the settlement.

9. Do I have a lawyer in this case?

The Court has appointed David Yeremian of DAVID YEREMIAN & ASSOCIATES, INC., 535 N. Brand Blvd., Suite 705, Glendale, California 91203, telephone 818.230.8380 and Emil Davtyan of DAVTYAN LAW FIRM, INC., 880 E. Broadway, Glendale, California 91205, telephone 818.875.2008 to represent you and other Class Members in the Lawsuit. These lawyers are called Class Counsel. They will be compensated from the Total Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees up to one-third of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel.

11. How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You will have 45 days from the date of mailing of this Class Notice to object to this settlement in writing. To do so, you must fill out the Objection Form with your name, address, and signature. You must also state your reasons for objecting to the settlement. You must sign and return the Objection Form and it must be mailed out to the Settlement Administrator, *Smith v. NOIA Residential Services, Inc.*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, California 92606, 1-XXX-XXX-XXXX, and be filed or postmarked on or before [ENTER DATE]. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

12. How do I dispute my workweek calculation?

To the extent you would like to dispute your employment dates or the number of workweeks with which you have been credited, you must mail the Dispute Form to the Settlement Administrator, *Smith v. NOIA Residential Services, Inc.*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, California 92606, 1-XXX-XXX-XXXX, and postmarked on or before [ENTER DATE]. You may produce evidence to the Settlement Administrator showing that such information is inaccurate. NOIA Residential Services, Inc. may respond with any additional information or records. The Settlement Administrator may rely on NOIA Residential Services, Inc.'s records without further foundation to perform its calculations but must give fair weight to records provided by you. The Settlement Administrator will make a recommendation and you may either accept it or reject it.

13. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on [ENTER DATE AND TIME] at the Fresno County Superior Court, Department 402, 1130 O Street Fresno, California 93721. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

14. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

15. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter stating that it is your "Notice of Intention to Appear" in the settlement. Be sure to include your name, address, and telephone number. Your Notice of Intention to Appear must be postmarked no later than [ENTER DATE], and be sent to the Settlement Administrator, CPT Group, Inc., at the address listed above.

16. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call 1-XXX-XXX-XXXX or write the Settlement Administrator, CPT Group, Inc., located at 50 Corporate Park, Irvine, California 92606.

You can also access the Fresno Superior Court Case Information Portal at <https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/Home/Dashboard/29>, or by visiting the Clerk's Office at the Fresno County Superior Court, located at 1130 O Street Fresno, California 93721, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

The Settlement Administrator has also setup a website which has links to this Class Notice and other documents related to the proposed settlement, including the Joint Stipulation of Class Settlement. The website is: [ENTER WEBSITE URL].

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT B

OBJECTION FORM

SMITH vs. NOIA RESIDENTIAL SERVICES, INC.
Fresno County Superior Court, Case No. 20CECG01820

**TO OBJECT TO THE SETTLEMENT, YOU MUST FILL OUT, SIGN, AND RETURN
THIS FORM, POSTMARKED ON OR BEFORE **INSERT DATE**, 2022, TO CPT
GROUP, INC. AT 50 CORPORATE PARK, IRVINE, CALIFORNIA 92606.**

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] Former Names (if any):

[ADDRESS LINE 1] _____

[ADDRESS LINE 2] _____

**THIS FORM IS TO BE USED ONLY IF YOU WANT TO OBJECT TO THE PROPOSED
SETTLEMENT.**

I object to the settlement for the following reasons:

(Attach additional pages if necessary.)

Signed on _____, 2022

Signature: _____

EXHIBIT C

REQUEST FOR EXCLUSION FORM

SMITH vs. NOIA RESIDENTIAL SERVICES, INC.
Fresno County Superior Court, Case No. 20CECG01820

TO EXCLUDE YOURSELF FROM THE SETTLEMENT, YOU MUST SIGN AND RETURN THIS FORM, POSTMARKED ON OR BEFORE **INSERT DATE, 2022, TO CPT GROUP, INC. AT 50 CORPORATE PARK, IRVINE, CALIFORNIA 92606.**

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] Former Names (if any):

[ADDRESS LINE 1] _____

[ADDRESS LINE 2] _____

[TELEPHONE NUMBER] _____

THIS FORM IS TO BE USED ONLY IF YOU DO NOT WANT TO PARTICIPATE IN THE PROPOSED SETTLEMENT. IF YOU WANT TO RECEIVE A SETTLEMENT PAYMENT, DO NOT SUBMIT THIS FORM.

**[] By checking the box to the left, and signing and completing the below, I agree to the following:
I do not want to participate in the settlement in *Smith vs. NOIA Residential Services, Inc.*, Fresno County Superior Court, Case No. 20CECG01820. I understand by not participating and excluding myself from the settlement, that I will not receive any money from the settlement.**

Executed on _____, 2022

Signature: _____

EXHIBIT D

DISPUTE FORM

SMITH vs. NOIA RESIDENTIAL SERVICES, INC.
Fresno County Superior Court, Case No. 20CECG01820

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] Former Names (if any):

[ADDRESS LINE 1] _____

[ADDRESS LINE 2]

Your estimated settlement amount (shown below) is based on your pay periods worked during the Class Period. Your estimated settlement amount is a proportion of the total number of pay periods worked by all Class Members.

Class Period:	Covered Period Start Date – Covered Period End Date
Pay Periods	«Pay Periods»
Estimated Settlement Amount:	«Estimated Amount»

Your actual settlement amount may be higher or lower based on the number of Class Members who opt-out, the Court's rulings related to fees, costs, incentive payments, and other factors. Unless you believe that any information above is inaccurate, you do not need to do anything to receive your settlement amount.

DO NOT fill out the portion below or return this form UNLESS you believe any of the information above is NOT accurate or your address is incorrect. If you would like to dispute the above information, please sign and date the below, and mail it to the Settlement Administrator along with supporting evidence or information on or before **Response Date**.

OPTION TO DISPUTE

- ☐ I wish to dispute the number of pay periods in the Class Period. I believe that I worked _____ pay periods for NOIA Residential Services, Inc. (or its predecessors) during the Class Period. I have enclosed documentation substantiating my dispute. I understand that by submitting this dispute, the Settlement Administrator will review the Defendant's records and make a determination based on those records and the records I submit.

Sign your name here

Date

Print your name here

Telephone Number

YOU MUST MAIL THIS DISPUTE FORM BY _____, 2022 TO THE FOLLOWING ADDRESS OR FAX:

c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606

If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

EXHIBIT 2

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380

818 230 0308 FAX

DAVID@YEREMIANLAW.COM; JASON@YEREMIANLAW.COM

June 5, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128>

Private Attorneys General Act
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL TO:

NOIA Residential Services

Agent for Service of Process – Monty B. Schultz
1915 Howard Rd. Ste, #D
Madera, CA 93637
Certified Mail Tracking Number: 7019 2970 0000 5059 9616

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter
*Mary Smith v NOIA Residential Services, Inc.***

Gentlepersons:

This office represents Plaintiff Mary Jean Smith (“Plaintiff”) and other aggrieved employees (Plaintiff and aggrieved employees are collectively hereinafter referred to as “Aggrieved Employees”) for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 218.6, 221, 226, 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, 2698 and 2699, *et seq.*; and provisions of the Industrial Welfare Commission (IWC) Wage Order(s).

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants NOIA RESIDENTIAL SERVICES, INC, a California corporation, and DOES 1 through 50 inclusive (defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt hourly employee. She was employed as a direct care staff nurse. Aggrieved Employees include all of Defendants’ non-exempt hourly employees in the state of California from one year prior to the date of this letter and continuing through the present.

Aggrieved Employees consistently worked at Defendants' behest, under their control, and subject to their policies and practices without being paid all wages due.

As discussed in detail below, Defendants' employment practices resulted in systematic and ongoing violations, including for: (i) Aggrieved Employees performing off-the-clock pre-shift work, (ii) the under-recording of hours worked, all while Employees were under the control of Defendants, (iii) failure to provide timely, uninterrupted meal and rest breaks, (iv) failure to pay minimum wages for all hours worked (v) failure to properly calculate all hours worked, (vi) failure to furnish accurate wage statements, (vii) failure to properly calculate and pay overtime wages, including by failing to include productivity and/or nondiscretionary bonuses in the regular rate, and (viii) failure to reimburse all necessary incurred business related expenses. Defendants' conduct has violated and violates various provisions of the California Labor Code and applicable Wage Orders, including IWC Wage Order No. 15-2001 regulating the wages, hours and working conditions in the household occupations. ("Wage Order No. 15.")

Aggrieved Employees were employed as direct care staff nurses providing residential care to Defendants' clients, who were individuals of all ages with varying degrees of disability and infirmity. Plaintiff performed job duties caring for these customer's every needs, including feeding and dressing them, providing laundry services, assisting with medication management and administration, providing minor medical care, and assisting with their personal hygiene. Aggrieved Employees also spent time during their work shifts performing other related duties for Defendants and their customers, including providing related housekeeping, cooking, laundry, and other cleaning services, and Plaintiff and her co-workers were generally tasked with helping their clients manage their households. Plaintiff estimates and alleges that at least twenty percent (20%) of her daily time was spent on these general housekeeping duties, and upon information and belief this percentage was the same for the other Aggrieved Employees. Aggrieved Employees regularly worked shifts of at least eight (8) hours and often for ten or more hours, and did so on at least five (5) work shifts per work week, while often working six or more. Aggrieved Employees worked these long hours without receiving required meal periods and rest breaks, as they were required to remain on duty during any break time and on call at their patients' side to attend to their needs at all times, Defendants' uniformly applied policies and practices thus exerted control over Aggrieved Employees during any break they attempted to take.

Defendants' implemented policies and practices which systematically under-paid wages, including by requiring Aggrieved Employees to under-report their hours worked. For example, Defendants instituted a manual time keeping system and required Aggrieved Employees to input times conforming to scheduled hours rather than those they actually worked. Defendants and their managers would pressure Aggrieved Employees, to arrive at Defendants facilities several minutes before their scheduled shifts were set to begin. However, Defendants required them to immediately start working preparing for their shift and performing job duties before they were permitted to record the start of their scheduled shifts. Duties performed during this uncompensated off the clock time included conducting detailed shift transition meetings with outgoing co-workers at shift start up and with incoming co-workers at the end of shifts, and covering further work shift time to cover for shift change Employee who was late. This resulted in the uniform practice of Defendants under-reporting and under-recording of hours worked to

the detriment of Aggrieved Employees, which resulted in substantial unpaid wages owed to Aggrieved Employees.

Therefore, from at least one (1) year prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Aggrieved Employees for all hours worked, including failure to pay both minimum wages and overtime and double time for all hours worked, as required by California Law. Defendants thus failed to pay Employees at least minimum wages for all the time they worked for Defendants in violation of the Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders.

In addition to the normal shift schedules Aggrieved Employees worked after driving to their assigned work locations, Defendants also required them to drive to and attend regularly scheduled work-related meetings during which they were subject to Defendants' control and authority. Aggrieved Employees were compensated to attend these meetings at \$10.00 per hour, an hourly rate that is under California minimum wage standard. Moreover, upon information and belief, this time spent under Defendants' control and authority was not factored by Defendants into the actual hours worked by Aggrieved Employees. Defendants instead paid for this time separately under an "INSERVICE" listing on wage statements, which resulted in the systematic underpayment of minimum wages, overtime, and double time wages to Aggrieved Employees.

To the extent that Defendants paid overtime to Aggrieved Employees, they began doing so well after eight (8) hours into a work shift, as Defendants' corresponding time records and paystubs show. Therefore, from one (1) year prior to the filing of this lawsuit and continuing to the present, Defendants had a consistent policy or practice of failing to pay Employees for all hours worked, and failing to pay minimum wages, overtime wages, and double time wages for all time worked as required by California Law and in violation of the Labor Code § 1197, IWC Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Defendants' willful actions resulted in the systematic underpayment of wages to Aggrieved Employees, including underpayment of overtime and double time pay to Aggrieved Employees over a period of time.

Defendants also unlawfully deducted wages earned by and owed to the Aggrieved Employees, in violation of Labor Code § 221. Defendants' common policy and/or practice of understating the hours worked by Aggrieved Employees has given rise to further ongoing violations of Labor Code § 221.

As a result of Defendants' unlawful policies and practices, Aggrieved Employees incurred overtime hours worked for which they were not adequately and completely compensated for, in addition to the hours they were required to work off-the-clock. To the extent applicable, Defendants also failed to pay Aggrieved Employees at an overtime rate of 1.5 times the regular rate for the first eight hours of the seventh consecutive work day in a week and overtime payments at the rate of two (2) times the regular rate for hours worked over eight (8) on the seventh consecutive work day, as required under the Labor Code and applicable IWC Wage Orders.'

Moreover, Defendants did not include productivity related bonuses/payments in Aggrieved Employees' overtime pay calculations. More specifically, Aggrieved Employees received a \$0.25 payment/bonus for each individual client they assisted in administering medication to during their scheduled shifts. Defendants listed this payment on wage statements provided to Aggrieved Employees as "PassingMed." Despite the fact that these payments were a form of remuneration for work duties and hours worked, and were non-discretionary and automatically paid under Defendants' compensation plan, Defendants did not factor this form of remuneration into the regular hourly rate Defendants used to calculate and pay overtime to Aggrieved Employees. This resulted in a systematic and ongoing failure to pay all overtime and double time wages owed, or to pay them at the appropriate rate, under Defendants' uniformly applied policies and payroll practices.

Due to the work demands and pressure from managers and supervisors, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of ten (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Employee's effective hourly rate of pay, for each meal period that Defendants failed to provide or deficiently provided.

Defendants placed the current job needs over Aggrieved Employees' lawful meal breaks, forcing Aggrieved Employees to take on duty meal periods in order to keep up with the demands of the job. For example, Defendants' had a strict policy requiring direct care staff to never leave the client unattended or unassisted throughout their entire work shift, even, upon information and belief, when a client was assigned to multiple Aggrieved Employees. This resulted in a policy and practice that systematically failed to provide timely, uninterrupted, and duty-free meal period.

Upon information and belief, on the occasions when the Aggrieved Employees worked more than ten (10) hours in a shift, Defendants failed to provide them with a second, uninterrupted, timely and duty-free meal period, as Defendants time records will show. As a result, Defendants' failure to provide Aggrieved Employees with all the legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods, all in violation of the Labor Code and applicable Wage Orders, is and will be evidenced by Defendants' business records, or lack thereof.

As discussed above, Plaintiff alleges that she and Aggrieved Employees do not come within the exception of Wage Order No. 15 as they performed general household work exceeding twenty percent (20%) of their total weekly hours worked.

Aggrieved Employees were regularly required by Defendants to work through or during their rest breaks, and were not provided with one hour's wages in lieu thereof as required by Labor Code and IWC Wage Orders. Aggrieved Employees were also restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not authorized and permitted to take duty-free rest periods. For example, Defendants' had a strict policy requiring direct care staff to never leave the client unattended or unassisted throughout their entire work shift, even, upon

information and belief, when a client was assigned to multiple Aggrieved Employees. This resulted in a policy and practice that systematically failed to provide timely, uninterrupted, and duty-free rest breaks. Moreover, Aggrieved Employees were unable to leave Defendants premises during rest breaks.

On occasions when the Aggrieved Employees worked over ten (10) hour shifts, they were, upon information and belief, not authorized and permitted to take a third timely and uninterrupted, duty-free rest break.

As a result of the above described requirements to work off the clock, under recording of hours worked, the failure to calculate and pay wages at the correct rates, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants for all hours they worked and were under Defendants' control, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. The Aggrieved Employees were therefore entitled to receive overtime wages from Defendants, which they were consistently denied in violation of the Labor Code and applicable paragraphs of the IWC Wage Orders.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a), and Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203.

Defendants' management also did not reimburse Aggrieved Employees for all necessarily incurred expenses in performance of their job duties. Plaintiff incurred personal cellular phone and clothing expenses in the performance of her job duties that were uncompensated for. For example, Plaintiff was required to purchase medical scrubs while working on Defendants premises, which Defendants did not reimburse for. Furthermore, Defendants management would call Plaintiff on her personal cellular phone to obtain updates on clients. Plaintiff estimates that a small portion of her personal cellular phone usage was incurred as a result of these work related calls and messages.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." Due to Defendants policy of under recording hours worked, Aggrieved Employees were required to work pre-shift and post-shift hours off the clock without being paid minimum wages, regular wages, and applicable overtime at their required rates.

Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this

indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved Employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and civil penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and Wage Order provisions. To the extent minimum wage compensation is determined to be owed to the Aggrieved Employees who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Aggrieved Employees. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Aggrieved Employees are entitled to seek and recover statutory costs.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime and double time. Specifically, Defendants had a consistent policy of not paying Employees wages for all hours worked, including hours at their required regular, overtime, and double-time rates. Defendants, and each of them, have intentionally and improperly changed, adjusted and/or modified certain employees' hours, including Plaintiff's, or required Aggrieved Employees to do so, or otherwise caused them to work off the clock to avoid paying Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in violation of the California Labor Code, the California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.

Moreover, Defendants did not include productivity related bonuses/payments in Aggrieved Employees' overtime pay calculations. More specifically, Aggrieved Employees received a \$0.25 payment/bonus for each individual client they assisted in administering medication to during their scheduled shifts. Defendants listed this payment on wage statements provided to Aggrieved Employees as "PassingMed." Despite the fact that these payments were a form of remuneration for work duties and hours worked, and were non-discretionary and automatically paid under Defendants' compensation plan, Defendants did not factor this form of remuneration into the regular hourly rate Defendants used to calculate and pay overtime to Aggrieved Employees. This resulted in a systematic and ongoing failure to pay all overtime and double time

wages owed, or to pay them at the appropriate rate, under Defendants' uniformly applied policies and payroll practices

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five hours without providing them with uninterrupted meal periods of not less than thirty minutes as required under Labor Code §§ 226.7, 512, and paragraph 11 of the applicable Wage Orders. Specifically, Aggrieved Employees were forced to incur shortened meal periods, were provided with breaks late and well after the fifth hour of work, could not be relieved to take breaks, or were required to remain on-duty at all times and were unable to take off-duty breaks or were otherwise not provided with the opportunity to take required breaks. Defendants also automatically deducted 30 minutes per work shift for a meal periods without regard to whether it was actually and lawfully provided.

On the occasions when Aggrieved Employees were provided with a meal period, it was often untimely or interrupted by having to respond to work demands or remain under Defendant's control, in violation of the Labor Code and applicable Wage Orders. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Plaintiff further alleges that Aggrieved Employees s are not categorized under California Wage Order No. 15 ("WO15"), and thus exempt from California overtime, meal, and rest laws because they performed general household work exceeding twenty percent (20%) of their total weekly hours worked, as described above.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2) and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, as required under Labor Code § 226.7. Specifically, Defendants provided rest periods untimely or for shortened durations, and Defendants' policy discouraged and effectively prevented Aggrieved Employees from leaving Defendants' premises during breaks, and required them to remain on call during breaks to respond to radio calls or other job requirements. Defendants also required Aggrieved Employees to request permission to take a break, and could only leave when approved and relieved by a breaker, which again evidences unlawful control during breaks.

Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Order, Aggrieved Employees are entitled to damages in an amount equal to one hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and Wage Order provisions.

Under the PAGA, and following exhaustion of the notice period, Plaintiff is seeking all civil and statutory penalties and wages as available and applicable under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Unlawfully Collecting or Receiving Wages in Violation of Labor Code § 221

Labor Code § 221 provides, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." As discussed above, Defendants unlawfully received and/or collected wages from the Aggrieved Employees by implementing a policy understating the hours worked and by requiring off the clock work and practicing unlawful rounding, as alleged above. Aggrieved Employees had their wages unlawfully deducted when Defendants' managers recorded fewer hours worked in the timekeeping records than were in fact worked. By not compensating Employees for all hours worked and failure to pay for hours spent under Defendants' control, Defendants unlawfully deducted wages earned by and owed to Aggrieved Employees, in violation of Labor Code § 221.

In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code § 558. Under the PAGA, and following exhaustion of the notice period, Plaintiff seeking all civil and statutory penalties available and applicable under Labor Code §§ 510, 558, 1194, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish accurate, itemized wage

statements in writing to its employees. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Therefore, Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages, overtime, premium pay for deficiently provided meal periods and rest breaks, and unlawfully received or collected wages, as discussed above. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ..."

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages earned by and owed to Aggrieved Employees at the time of their termination of within seventy-two hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or

termination, under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199, 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders.

Defendants also required Aggrieved Employees to work hours off the clock for which they were not compensated, including during interrupted or otherwise on-duty meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work conducted on a work shift and a workday, as addressed above. Therefore, when Aggrieved Employees received wage statements and pay checks, they did not compensate all hours worked on a timely basis, resulting in Defendants' systematic failure to pay all wages owed to Aggrieved Employees twice monthly in accordance with the requirements of Labor Code § 204, and weekly in accordance with Labor Code § 201.3.

Given the above described off the clock work and deductions from hours worked perpetrated by Defendants' management, Plaintiff would often notice on her wage statements that she was being paid for substantially fewer hours than she actually worked, and that she was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or over forty in a work week and that he was not paid all double time owed either. Defendants' uniformly applied payroll policies and practices thus resulted in further systematic and ongoing violations of the requirements of Labor Code § 204, and weekly in accordance with Labor Code § 201.3.

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties, interest, fees and costs pursuant to Labor Code §§ 201.3, 210, 218.5, 558, and 1194. In failing to pay Aggrieved Employees minimum wages and overtime, by unlawful rounding and off the clock work, by not providing proper meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all discussed above, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and paragraph 7 of the applicable IWC Wage Orders, entitling Aggrieved Employees to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders. Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 203, 204, 2926, 2927, and 2699.5 seeking all civil penalties available and applicable under Labor Code §§ 204, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

In the present case, as discussed above, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, in the form of personal cellular phone usage and having to buy clothing required for their job. Thus Aggrieved Employees were not reimbursed for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Defendants systematically and uniformly failed to reimburse those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9. Defendants are liable for PAGA penalties resulting from their failure to reimburse necessary business expenses incurred by the Aggrieved Employees. Accordingly, Aggrieved Employees are entitled to recover, and hereby seeks through this Representative Action, all civil and statutory penalties authorized for violations of California Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§ 2802 and 2699(f)(2), and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, double time, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.* Defendants have also failed to comply with paragraph 7 of the applicable California IWC Wage Orders by failing to maintain time records showing when the employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from payment of wages and accurately reporting total hours worked by the Aggrieved Employees, and they are entitled to recover penalties pursuant to paragraph 20 of the applicable IWC Wage Orders.

Under the PAGA, and following exhaustion of the notice period, Plaintiff asserts PAGA claims for failure to provide Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Aggrieved Employees under Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages available and applicable under Labor Code §§ 558, 1174.5, 1199, and 2699(f)(2), 2699.5, and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

///

Unfair Competition Under Business and Professions Code § 17200, et seq.

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

Conclusion

Consequently, Defendants' conduct has been and continues to be unfair, unlawful, and harmful to Aggrieved Employees and the general public in violation of Business & Professions Code § 17200 et seq.

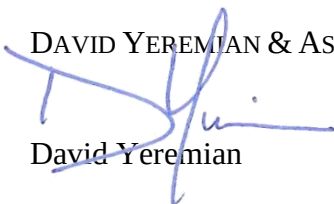
We have been constrained to initially move forward with the filing of this Complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter provides the requisite notice under the Act to the LWDA and NOIA Residential Services, Inc., by setting forth the specific provisions of the Labor Code and related provisions. To prevent the violations described in the Complaint and herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within sixty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in an amended Complaint.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendant by Certified Mail

EXHIBIT 3

Noia Residential Services, Inc.

Personnel Policy

Number # 58

MEAL PERIODS

A non-exempt employee who works shifts in excess of six (6) hours must receive a meal period.

However, an employee can agree to an "on-duty" paid meal period. The nature of our work often prevents the employee from being relieved of all duty, therefore, NRS, Inc. and the employee must have a voluntary written agreement for an on-the-job paid meal period. When the employee has a "free of duty" meal, the time taken from duty must be documented (clock out and clock in).

When it is not possible to take 1/2 hour lunch break - EMERGENCIES ONLY - the manager or designee must be notified within 24 hours. The time card must be signed by the manager and employee unless overtime was incurred in which case the Overtime Authorization Form must be filled out.

Employees must follow their schedules. Changes in the schedule have to be pre-authorized by the facility Program Manager and for NCC, by the Program Director.

MEAL PERIODS FOR ICF/DD-H HOMES

Employees who work shifts in excess of six (6) hours must take a "free of duty meal period when there are more than two employees at the facility. (Regulations for ICF/DD-H homes is one (1) staff for three (3) clients) and for Noia's Adult Day Program in-home staff ratio is (1) staff four (4) consumers. Employees who work more than ten (10) hours in a day are ordinarily entitled to two (2) meal periods. They may voluntarily waive the right to one of their two meal periods. The waiver must be written and signed by the employee and NRS.

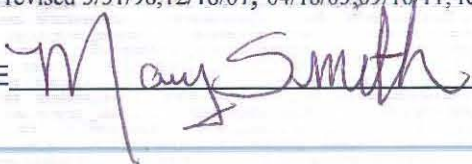
When there are more than two staff in an ICF/DD-H home shift (for Noia's Adult Day Program in-home staff ration of 1:4-one staff to four consumers), employees are responsible to take their free-of-duty meal. They are responsible to "clock out and clock in" for the free-of-duty meal period. Payroll will deduct the amount of the free-of-duty meal period.

Any employee working for NRS, Inc., may revoke the waiver of "on-duty" paid meal period at any time by providing at least one day's written notice. Due to the nature of our services, "providing client/consumer care" NRS, Inc. reserves the right to assign the employee to a different shift, if available, in order to accommodate the employee request and meet client/consumer's needs.

wpdocs/perplma 4/22/94 revised 4/22/97, 6/1/97

Reviewed and revised 3/31/98, 12/18/01, 04/18/03, 09/16/11; reviewed 03/24/14;

SIGNATURE



DATE

12-17-14

EXHIBIT 4

Noia Residential Services, Inc.

Personnel Policy

Number # 56

Reviewed on July 10 2019-NRS, Lucia Noia, LCSW

REST PERIODS

All employees are granted a (10) ten-minute rest period for every four hours worked. These rest periods are counted as time worked.

Rest periods, due to the nature of the assignments shall be taken at the work place and the employee shall not leave the premises.

Due to the nature of our client's programmatic needs, employees shall plan rest periods of one staff at a time. The House Manager is responsible to ensure that the above policy is implemented at all times.

EXHIBIT 5

NOIA Residential Services Inc
606 E. BELMONT AVE
FRESNO, CA 93701

Earnings Statement

Check Date: August 09, 2019
Period Beginning: July 16, 2019
Period Ending: July 31, 2019
Check Number: 4863
Net Pay: 1,037.93
Check Amount: 1,037.93

MARY J SMITH Employee Number 14600
Pay Basis Hourly

Account# 6040
Home 102

Earnings	Rate	Hours	Amount	YTD Hrs	YTD Amt
Regular	12.00	91.97	1103.64	947.00	11298.31
OT	18.00	1.49	26.82	23.59	424.18
PassingMed	0.00		5.75		28.00
Bereave				16.00	192.00
Daily DIFF					8.90
INSERVICE					50.00
MT					25.00
RETRO				63.21	50.08
Sick				24.00	288.00
Vacation				40.00	480.00
Total Gross Pay		93.46	1136.21	1113.80	12844.47

Taxes	Status	Taxable	Amount	YTD Amt
Medicare		1136.21	16.47	186.24
Medicare - Additiona		1136.21		
OASDI		1136.21	70.45	796.36
CA SDI - Employee		1136.21	11.36	128.44
Federal Income Tax	S/13	1136.21		
California SITW	S/13	1136.21		
Total Tax Withholding			98.28	1111.04

Accruals	Balance	Used Hours
Sick	24.0000	24.0000

NOIA Residential Services Inc
606 E. BELMONT AVE
FRESNO, CA 93701

Earnings Statement

Check Date: August 09, 2019
Period Beginning: July 16, 2019
Period Ending: July 31, 2019
Check Number: 4831
Net Pay: 727.09
Check Amount: 727.09

MARY M MAXEY Employee Number 20090
Pay Basis Hourly

Account# 6040
Home 109

Earnings	Rate	Hours	Amount	YTD Hrs	YTD Amt
Regular	12.00	64.88	778.56	189.74	2276.88
OT	18.00	0.84	15.12	0.84	15.12
Daily DIFF	0.00		37.61		123.33
Total Gross Pay		65.72	831.29	190.58	2415.33

Taxes	Status	Taxable	Amount	YTD Amt
Medicare		831.29	12.05	35.02
Medicare - Additiona		831.29		
OASDI		831.29	51.54	149.75
CA SDI - Employee		831.29	8.31	24.15
Federal Income Tax	S/2	831.29	32.30	126.86
California SITW	S/2	831.29		8.13
Total Tax Withholding			104.20	343.91

Accruals	Balance	Used Hours
Sick - prob	0.0000	0.0000

NOIA Residential Services Inc
 606 E. BELMONT AVE
 FRESNO, CA 93701

MARY J SMITH

Pay Basis

Hourly

Employee Number

14600

Account#

6040

Home

109

Earnings Statement

Check Date: December 24, 2019

Period Beginning: December 01, 2019

Period Ending: December 15, 2019

Check Number 5713

Net Pay 897.87

Check Amount 897.87

Earnings	Rate	Hours	Amount	YTD Hrs	YTD Amt
Regular	12.00	73.11	877.32	1669.43	19967.47
OT	18.00	2.10	37.80	43.22	777.52
INSERVICE	0.00		10.00		150.00
PassingMed	0.00		1.00		47.25
Daily DIFF	0.00		56.77		169.71
Bereave				16.00	192.00
Double Tim				7.88	189.12
MT					25.00
RETRO				63.21	50.08
Sick				24.00	288.00
Vacation				40.00	480.00
Total Gross Pay		75.21	982.89	1863.74	22336.15

Taxes	Status	Taxable	Amount	YTD Amt
Medicare		982.89	14.25	323.87
Medicare - Additiona		982.89		
OASDI		982.89	60.94	1384.84
CA SDI - Employee		982.89	9.83	223.36
Federal Income Tax	S/13	982.89		
California SITW	S/13	982.89		
Total Tax Withholding			85.02	1932.07

Deductions	Amount	YTD Amt
Garnishment		455.00
Total Deductions		455.00

NOIA Residential Services Inc
696 E. BELMONT AVE
FRESNO, CA 93701

Earnings Statement

MARY J SMITH

Employee Number 14600

Account# 6040

Pay Basis Hourly

Home 102

Check Date: January 24, 2019

Period Beginning: January 01, 2019

Period Ending: January 15, 2019

Check Number 3699

Net Pay 781.86

Check Amount 781.86

Earnings	Rate	Hours	Amount	YTD Hrs	YTD Amt
Regular	12.00	47.20	566.40	67.52	794.19
Sick	12.00	24.00	288.00	24.00	288.00
PassingMed	0.00		1.50		1.50
Total Gross Pay		71.20	855.90	91.52	1083.69

Taxes	Status	Taxable	Amount	YTD Amt
Medicare		855.90	12.41	15.71
Medicare - Additiona		855.90		
OASDI		855.90	53.07	67.19
CA SDI - Employee		855.90	8.56	10.84
Federal Income Tax	S/13	855.90		
California SITW	S/13	855.90		
Total Tax Withholding			74.04	93.74

Accruals	Balance	Used Hours
Sick	14.3794	24.0000

NOIA Residential Services Inc
606 E. BELMONT AVE
FRESNO, CA 93701

Earnings Statement

MARY J SMITH

Employee Number 14600

Account# 6040

Pay Basis Hourly

Home 102

Check Date: February 08, 2019

Period Beginning: January 16, 2019

Period Ending: January 31, 2019

Check Number 3787

Net Pay 668.83

Check Amount 668.83

Earnings	Rate	Hours	Amount	YTD Hrs	YTD Amt
Regular	11.21	62.84	704.44	130.36	1498.63
OT	16.82	0.37	6.22	0.37	6.22
INSERVICE	0.00		20.00		20.00
PassingMed	0.00		1.50		3.00
Sick				24.00	288.00
Total Gross Pay		63.21	732.16	154.73	1815.85

Taxes	Status	Taxable	Amount	YTD Amt
Medicare		732.16	10.62	26.33
Medicare - Additiona		732.16		
OASDI		732.16	45.39	112.58
CA SDI - Employee		732.16	7.32	18.16
Federal Income Tax	S/13	732.16		
California SITW	S/13	732.16		
Total Tax Withholding			63.33	157.07

Accruals	Balance	Used Hours
Sick	16.4862	24.0000

EXHIBIT 6