

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Diego Aviles (SBN 315533)

diego@tomorrowlaw.com

Vedang Patel (SBN 328647)

vedang@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, JESUS R. GONZALEZ, on
behalf of himself and all others similarly situated
and aggrieved

Grace Y. Horoupian (SBN 180337)

Sean T. Kingston (SBN 276099)

FISHER & PHILLIPS LLP

2050 Main Street, Suite 1000

Irvine, California 92614

Tel: (949) 851-2424

Fax: (949) 851-0152

Attorneys for Defendants

TOTAL EDUCATION SOLUTIONS, INC.,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JESUS R. GONZALEZ, on behalf of himself
and all others similarly situated and aggrieved,

Plaintiff,

v.

TOTAL EDUCATION SOLUTIONS, INC.,
a California corporation; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 20STCV37984

[Assigned to the Hon. Maren Nelson, in
Dept. 17]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: October 5, 2020

Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement
("Settlement" or "Agreement" or "Settlement Agreement") is made by and between plaintiff
JESUS R. GONZALEZ ("Plaintiff") individually and on behalf of the Settlement Class, on the
one hand; and defendant TOTAL EDUCATION SOLUTIONS, INC. ("TES" or "Defendant"),

on the other hand, in the lawsuit entitled *Jesus R. Gonzalez v. Total Education Solutions, Inc.*, filed in Los Angeles County Superior Court, Case No. 20STCV37984 (the “Action”). Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “Action” means *Jesus R. Gonzalez v. Total Education Solutions, Inc.* filed in Los Angeles Superior Court, Case No. 20STCV37984.

B. “Aggrieved Employees” means Class Members working for Defendant during the PAGA Period as non-exempt, hourly-paid employees in California.

C. “Class Counsel” means: David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Notice” means the notice sent to class members after preliminary approval of the settlement in the manner described in Paragraph 9(A) of this agreement.

E. “Class Period” means the period from October 5, 2016 through May 24, 2022.

F. “Court” means the Superior Court of the State of California for the County of Los Angeles.

G. “Final Approval Date” means the later of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

H. “Defendant” means Total Education Solutions, Inc.

I. “Employer Taxes” means employer-funded taxes and contributions imposed on the wage portions of the Individual Settlement Payments under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers, such as for unemployment insurance.

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1 **J. “General Release”** means the broader release of claims by Plaintiff, which is in
2 addition to Plaintiff’s limited release of claims as a Participating Class Member.

3 **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One
4 Hundred Thousand Dollars and Zero Cents (\$100,000.00),¹ which shall be paid by Defendant,
5 from which all payments for the Individual Settlement Payments to Participating Class Members,
6 the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and
7 expenses to Class Counsel, Settlement Administration Costs, the Service Award, the PAGA
8 Payment, and the LWDA Payment shall be paid. It expressly excludes Employer Taxes, which
9 shall be paid by Defendant separate, apart, and in addition to the Gross Settlement Amount.

10 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved
11 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
12 Individual Settlement Share if he or she is also a Participating Class Member.

13 **M. “Individual Settlement Payment”** means a payment to a Participating Class
14 Member of his or her net share of the Net Settlement Amount.

15 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
16 Amount that a Participating Class Member is projected to receive based on the number of
17 Workweeks that he or she worked as a Settlement Class Member during the Class Period which
18 shall be reflected in his or her Class Notice.

19 **O. “LWDA Payment”** means the payment to the State of California Labor and
20 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
21 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
22 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
23 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand and Zero
24 Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand
25 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis
26 based on the Workweeks worked for Defendant as a non-exempt, hourly-paid employee in
27 California in the PAGA Period (*i.e.* the PAGA Payment).

28

¹ As the same may be increased in accordance with Paragraph 17, below.

1 **P. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
2 that is available for distribution to the Participating Class Members after deductions for the Court-
3 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
4 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
5 Payment, and the PAGA Payment.

6 **Q. “Operative Complaint” or “Complaint”** means the Second Amended
7 Complaint that was filed with the Court on June 23, 2021.

8 **R. “PAGA Payment** is the is the 25% portion of the Twenty Thousand Dollars and
9 Zero Cents (\$20,000.00) that is allocated toward PAGA penalties, Five Thousand Dollars and
10 Zero Cents (\$5,000.00) that will be paid to Aggrieved Employees on a *pro rata* basis based on
11 the Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA
12 Period, which would be in addition to their Individual Settlement Payment if they are
13 Participating Class Members, as well.

14 **S. “PAGA Period”** means the period from July 28, 2019 through May 24, 2022.

15 **T. “Participating Class Members”** means all Settlement Class Members who do
16 not submit a timely and valid Request for Exclusion.

17 **U. “Participating Individual Settlement Share”** means the gross amount of the Net
18 Settlement Amount that a Participating Class Member is eligible to receive based on the number
19 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
20 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
21 may be entitled if he or she is also an Aggrieved Employee.

22 **V. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
23 plaintiff Jesus R. Gonzalez.

24 **W. “Preliminary Approval Date”** means the date on which the Court enters an
25 Order granting preliminary approval of the Settlement.

26 **X. “Released Parties”** shall mean Defendant and each of its past, present, and future
27 respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-sponsored
28 employee benefit plans of any nature and their successors and predecessors in interest, including

all of their officers, directors, shareholders, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

Y. “Response Deadline” means the deadline for Settlement Class Members to mail any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the exclusive means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the Response Deadline.

Z. “Request for Exclusion” means a written request to be excluded from the Settlement Class pursuant to Paragraph 9(C) below.

AA. “Service Award” means monetary amounts to be paid to Plaintiff of up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval, will be paid out of the Gross Settlement Amount.

BB. “Settlement Administration Costs” means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, translating the Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated taxes and withholdings, providing declarations, generating Individual Settlement Payment checks and related tax reporting forms, doing administrative work related to unclaimed checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and to the LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related information, and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated

1 not to exceed \$5,900.00. If the actual amount of the Settlement Administration Costs is less than
2 \$5,900.00, the difference between \$5,900.00 and the actual Settlement Administration Costs
3 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
4 \$5,900.00 then such excess will be paid solely from the Gross Settlement Amount and Defendant
5 will not be responsible for paying any additional funds in order to pay these additional costs.

6 **CC. “Settlement Administrator”** means the Third-Party Administrator mutually
7 agreed upon by the Parties that will be responsible for the administration of the Settlement
8 including, without limitation, translating the Class Notice in Spanish, the distribution of the
9 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
10 and related matters under this Agreement.

11 **DD. “Settlement Class” or “Settlement Class Members” or “Class Members”**
12 means all current and former non-exempt, hourly-paid employees who worked as drivers in
13 California for Defendant at any time during the Class Period and who did not execute an
14 arbitration agreement.

15 **EE. “Workweeks”** means the number of weeks that a Settlement Class Member was
16 employed by and worked for the Defendant at least one shift in a non-exempt, hourly position
17 during the Class Period in California, based on hire dates, re-hire dates (as applicable), and
18 termination dates (as applicable).

19 **2. BACKGROUND**

20 **A.** On July 28, 2020, Plaintiff filed with the LWDA and served on Defendant a notice
21 under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to
22 recover civil penalties for Aggrieved Employees for various Labor Code violations. (“PAGA
23 Notice”).

24 **B.** On October 5, 2020, after sixty-five (65) days had passed without any action by
25 the LWDA with respect to the labor code violations alleged in the PAGA Notice, Plaintiff filed
26 a putative wage-and-hour class and representative action alleging that, during the Class Period,
27 Defendant, as it pertains to Class Members: (1) failed to pay overtime wages; (2) failed to pay
28 minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to

1 provide rest periods or compensation in lieu thereof; (5) failed to pay wages upon separation
2 from employment; (6) failed to issue compliant wage statements; (7) failed to indemnify
3 employees for business expenses; and (8) violated the Labor Code as alleged in the PAGA Notice
4 for which Plaintiff sought PAGA civil penalties (the “Action”).

5 **C.** On March 2, 2021, Plaintiff also filed with the LWDA an amended PAGA Notice,
6 stating Plaintiff also sought to seek PAGA civil penalties against The Institute for Redesign of
7 Learning (“Institute”) for alleged violations of the Labor Code (“Amended PAGA Notice”).
8 Thereafter, Plaintiff filed a First Amended Complaint in the Action adding as a named defendant,
9 the Institute.

10 **D.** On June 23, 2021, after sixty-five (65) days had passed without any action by the
11 LWDA with respect to the Labor Code violations alleged in the Amended PAGA Notice, Plaintiff
12 filed a Second Amended Complaint in the Action, now seeking PAGA civil penalties against the
13 Institute for the Labor Code violations as alleged in the Amended PAGA Notice, in addition to
14 Defendant.

15 **E.** Shortly thereafter, Plaintiff and Defendant (collectively, the “Parties”) agreed to
16 exchange informal discovery and attend an early mediation, in which Plaintiff was provided with,
17 among other things: (1) hire dates, termination dates, and rates of pay for 33% of Class Members
18 working as drivers for Defendant through mediation; (2) Defendant’s employee handbooks
19 containing the Defendant’s policies in effect during the Class Period; (3) Time and payroll
20 records for 33% of Class Members working through mediation; (4) all documents pertaining to
21 Plaintiff’s employment with Defendant.

22 **F.** On March 24, 2022, the Parties participated in a full-day mediation before Marc
23 Feder, Esquire, a well-regarded mediator experienced in mediating complex labor and
24 employment matters. With the aid of the mediator’s evaluation, the Parties reached the
25 Settlement to resolve the Action. As part and parcel to the Settlement, the Parties and the Institute
26 agreed that the Institute will be dismissed without prejudice if and when final approval if this
27 Settlement is granted by the Court.
28

1 **G.** Class Counsel has conducted significant investigation of the law and facts relating
2 to the claims asserted in the Action and the PAGA Notice, and have concluded that that the
3 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
4 Class, taking into account the sharply contested issues involved, the expense and time necessary
5 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
6 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
7 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
8 to be received by Settlement Class Members.

9 **H.** Defendant has concluded that, because of the substantial expense of defending
10 against the Action, the length of time necessary to resolve the issues presented herein, the
11 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
12 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
13 claims asserted against it in the Action and the PAGA Notice. However, Defendant nevertheless
14 desires to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
15 continuing litigation and for the purpose of putting to rest the controversies engendered by the
16 Action.

17 **I.** This Agreement is intended to and does effectuate the full, final, and complete
18 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
19 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California
20 and Aggrieved Employees.

21 **3. JURISDICTION**

22 The Court has jurisdiction over the Parties and the subject matter of the Action. The
23 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
24 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
25 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
26 pursuant to California Rule of Court, rule 3.769, subdivision (h).

27 **4. STIPULATION OF CLASS CERTIFICATION**

1 The Parties stipulate to the certification of the Settlement Class under this Agreement for
2 purposes of settlement only.

3 **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

4 After full execution of this Agreement, Plaintiff will move for an order granting
5 preliminary approval of the Settlement, approving and directing the mailing of the proposed
6 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
7 certifying the Settlement Class for settlement purposes only, and approving the deadlines
8 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
9 Objections. If and when the Court preliminarily approves the Settlement, and after
10 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
11 Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a
12 Judgment in line with this Settlement. The Parties may both respond to any Objections lodged
13 to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

14 **6. STATEMENT OF NO ADMISSION**

15 Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff
16 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
17 PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims
18 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
19 in the event that this Agreement is not approved by the Court, or any appellate court, is
20 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
21 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
22 PAGA Notice, and Defendant will not be deemed to have waived, limited, or affected in any way
23 any of its objections or defenses in the Action and the PAGA Notice. The Parties shall be restored
24 to their respective positions in the Action prior to the entry of this Settlement.

25 **7. RELEASE OF CLAIMS**

26 **A. Release by All Participating Class Members.**

27 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
28 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross

1 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and
2 all Participating Class Members release all claims against the Released Parties asserted in the
3 Operative Complaint, or any and all claims that may be asserted against the Released Parties
4 based on the factual allegations in the Operative Complaint, as follows: For the duration of the
5 Class Period, the release includes, for Participating Class Members: (a) all claims for failure to
6 pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to
7 provide compliant meal periods, or premium compensation in lieu thereof; (d) all claims for
8 failure to provide compliant rest periods, or premium compensation in lieu thereof (e) all claims
9 for the failure to timely pay wages upon termination or resignation; (f) all claims for non-
10 compliant wage statements; (g) all claims for failure to reimburse employees for business
11 expenses; and (h) all claims asserted through California Business & Professions Code section
12 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint
13 (the "Class Released Claims").

14 **B. Release by All Aggrieved Employees.**

15 For Aggrieved Employees, and, to the extent permitted by law, the State of California,
16 the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice,
17 Amended PAGA Notice, and thereafter alleged in the Operative Complaint, for PAGA civil
18 penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699 in connection with
19 alleged violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 246 *et seq.*, 432,
20 510, 512, 1174, 1194, 1194.2 1197, 1197.5, 1198.5, 2802, and 2810.5 (the "PAGA Released
21 Claims"). The Class Released Claims and PAGA Released Claims shall be referred to herein as
22 the "Released Claims".

23 **C. Claims Not Released**

24 The releases above expressly exclude all other claims, including claims for vested
25 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
26 compensation, and any other claims outside of the Class Released Claims of Participating Class
27 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
28

1 Employees (and, to the extent permitted by law, the State of California) arising outside of the
2 PAGA Period.

3 **D. General Release.**

4 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
5 of Judgment, and payment by Defendant to the Settlement Administrator selected of the full
6 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
7 addition to the Released Claims, Plaintiff makes the additional following General Release:
8 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
9 action of every nature and description whatsoever, known or unknown, asserted or that might
10 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
11 law or regulation arising out of, relating to, or in connection with any act or omission of the
12 Released Parties through the date of full execution of this Agreement in connection with
13 Plaintiff's employment with Defendant or the termination thereof, except for any and all other
14 claims that may not be released as a matter of law through this Agreement. To the extent of the
15 General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order
16 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendant to the
17 Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes
18 necessary to effectuate the Settlement, he shall have expressly waived and relinquished, to the
19 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
20 California Civil Code, or any other similar provision under federal or state law, which provides:

21 A general release does not extend to claims that the creditor or
22 releasing party does not know or suspect to exist in his or her
23 favor at the time of executing the release and that, if known by
24 him or her, would have materially affected his or her settlement
25 with the debtor or released party.

26 **8. SETTLEMENT ADMINISTRATOR**

27 **A.** Plaintiff and Defendant, through their respective counsel, have selected ILYM
28 Group, Inc. to administer the Settlement, which includes but is not limited to translating the Class
Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating
all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the

1 Settlement Administrator, currently estimated to be \$5,900.00 will be paid from the Gross
2 Settlement Amount. If the actual amount of the Settlement Administration Costs is less than
3 \$5,900.00, the difference between \$5,900.00 and the actual Settlement Administration Costs
4 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
5 \$5,900.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant
6 will not be responsible for paying any additional funds in order to pay these additional costs.

7 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
8 **PROCESS**

9 **A. Notice to the Settlement Class Members**

10 (1) Within seven (7) calendar days after the Preliminary Approval Date,
11 Defendant's Counsel shall provide the Settlement Administrator with information with respect
12 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
13 currently in Defendant's possession, custody, or control; (3) last known telephone number(s)
14 currently in Defendant's possession, custody, or control; (4) last known Social Security
15 Number(s) in Defendant's possession, custody, or control; and (5) the dates of employment (*i.e.*,
16 hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
17 Member ("Class List"). Absent mutual written agreement of counsel for the Parties or Court
18 order, the Settlement Administrator will keep this database confidential and secure and use it
19 only for the purposes described herein. The Settlement Administrator shall perform an address
20 search using the United States Postal Service National Change of Address ("NCOA") database
21 and update the addresses contained on the Class List with the newly-found addresses, if any.
22 Within seven (7) calendar days, or soon thereafter, of receiving the Class List from Defendant,
23 the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement
24 Class Members via first-class regular U.S. Mail using the most current mailing address
25 information available. The Settlement Administrator shall maintain the Class List and digital
26 copies of all the Settlement Administrator's records evidencing the giving of notice to any
27 Settlement Class Member, for at least four (4) years from the Final Approval Date.

28 (2) The Class Notice will set forth:

- 1 (a) the Settlement Class Member's estimated Individual
2 Settlement Payment and Individual PAGA Payment,
3 and the basis for each;
- 4 (b) the information required by California Rule of Court,
5 rule 3.766, subdivision (d);
- 6 (c) the material terms of the Settlement;
- 7 (d) the proposed Settlement Administration Costs;
- 8 (e) the definition of the Settlement Class;
- 9 (f) a statement that the Court has preliminarily approved
10 the Settlement;
- 11 (g) how the Settlement Class Member can obtain
12 additional information, including contact information
13 for Class Counsel;
- 14 (h) information regarding opt-out and objection
15 procedures;
- 16 (i) the date and location of the Final Approval Hearing;
17 and
- 18 (j) that the Settlement Class Member must notify the
19 Settlement Administrator no later than the Response
20 Deadline if the Settlement Class Member disputes the
21 accuracy of the number of Workweeks as set forth on
22 his or her Class Notice ("Workweek Dispute"). If a
23 Settlement Class Member fails to timely dispute the
24 number of Workweeks attributed to him or her in
25 conformity with the instructions in the Class Notice,
26 then he or she shall be deemed to have waived any
27 objection to its accuracy and any claim to any
28 additional settlement payment based on different data.

1 (3) If a Class Notice from the initial notice mailing is returned as
2 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
3 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
4 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
5 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
6 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
7 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
8 Administrator with a forwarding address before the Response Deadline shall be promptly re-
9 mailed to the forwarding address affixed thereto.

10 (4) No later than seven (7) calendar days from the Response Deadline, the
11 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
12 completion of the notice process, including the number of attempts to obtain valid mailing
13 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
14 and copies of all Requests for Exclusion and Objections received by the Settlement
15 Administrator.

16 **B. Objections.**

17 Only Participating Class Members may object to the Settlement. In order for any
18 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
19 do so by mailing a written objection to the Settlement Administrator at the address or phone
20 number provided on the Class Notice no later than the Response Deadline. The Settlement
21 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's
22 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
23 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
24 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
25 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
26 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
27 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
28 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member

1 will remain a member of the Settlement Class and if the Court approves this Agreement, the
2 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
3 the same extent as a Settlement Class Member who does not object. The date of mailing of the
4 Class Notice to the objecting Settlement Class Member shall be conclusively determined
5 according to the records of the Settlement Administrator. Settlement Class Members need not
6 object in writing to be heard at the Final Approval Hearing; they may object or comment in
7 person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond
8 to any objection lodged with the Court up to five (5) court days before the Final Approval
9 Hearing.

10 **C. Requesting Exclusion.**

11 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
12 Settlement by mailing a written request to be excluded from the Settlement ("Request for
13 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
14 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
15 Member's Social Security Number; (3) the Class Member's signature; and (4) the following
16 statement: "Please exclude me from the Settlement Class in the *Jesus R. Gonzalez v. Total*
17 *Education Solutions, Inc.* matter" or a statement of similar meaning standing for the proposition
18 that the Class member does not wish to participate in the Settlement. The Settlement
19 Administrator shall immediately provide notice of all Requests for Exclusion to Class Counsel
20 and Defendant's Counsel and shall report the Requests for Exclusions that it receives, to the
21 Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement
22 Class Member who requests exclusion using this procedure will not be entitled to receive any
23 payment from the Settlement and will not be bound by the Settlement Agreement or have any
24 right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who
25 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
26 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
27 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
28 granted. A Settlement Class Member cannot submit both a Request for Exclusion and an

objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled. Settlement Class Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

D. Disputes Regarding Settlement Class Members' Workweek Data.

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide notice of all disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

A. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement

1 Administrator will determine the total number of Workweeks worked by each Aggrieved
2 Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the
3 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
4 (“PAGA Workweeks”).

5 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the
6 Settlement Administrator will use the following formula: Individual Settlement Share =
7 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

8 **C.** To determine each Participating Class Member’s Participating Individual
9 Settlement Share, the Settlement Administrator will determine the aggregate number of
10 Workweeks worked by all Participating Class Members during the Class Period (“Participating
11 Class Workweeks”) and use the following formula: Individual Settlement Share =
12 (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement
13 Amount.

14 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
15 to Participating Class Members by way of check and is referred to as “Individual Settlement
16 Payment(s)”.

17 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the
18 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual
19 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$5,000.00 (the
20 PAGA Payment).

21 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
22 to Participating Class Members and/or Aggrieved Employees by way of check. When a
23 Participating Class Member is also an Aggrieved Employee, one check may be issued that
24 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

25 **11. DISTRIBUTION OF PAYMENTS**

26 **A. Distribution of Individual Settlement Payments.**

27 Participating Class Members will receive an Individual Settlement Payment and
28 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement

1 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
2 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
3 calendar days after expiration of the 180-day period, checks for such payments shall be
4 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
5 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid
6 Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
7 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street,
8 Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles
9 County. The Settlement Administrator shall prepare a report regarding the distribution plan
10 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court
11 by Class Counsel along with a proposed amended judgment that is consistent with the
12 provisions of Code of Civil Procedure section 384.

13 **B. Funding of Settlement.**

14 Defendant shall, within fifteen (15) calendar days of Final Approval Date or no later than
15 December 1, 2022, whichever is the later, make payment of one half (1/2) of the Gross Settlement
16 Amount (as the same may be escalated pursuant to Paragraph 17 of this Agreement) to the
17 Settlement Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in an
18 interest-bearing qualified settlement account (“QSA”) with an FDIC insured banking institution,
19 for distribution in accordance with this Agreement and the Court’s Orders and subject to the
20 conditions described herein. Thereafter, Defendant shall pay the remaining one half (1/2) of the
21 Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this
22 Agreement), and Employer Taxes to the Settlement Administrator no later than February 1, 2023.
23 If the Final Approval Date occurs on or after February 1, 2023, then the full Gross Settlement
24 Amount and Employer Taxes shall be paid within fifteen (15) calendar days of the Final Approval
25 Date.

26 **C. Time for Distribution.**

27 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
28 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator

1 shall distribute Payments from the QSA for: (1) the Service Award to Plaintiff as specified in
2 this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
3 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
4 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
5 Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA
6 Payments as specified in this Agreement and approved by the Court. The balance remaining
7 shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be
8 made to Participating Class Members, less applicable taxes and withholdings. All interest
9 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
10 Participating Class Members based on the number of Workweeks worked by them in the Class
11 Period.

12 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

13 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
14 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
15 17 of this Agreement, amounts to Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00).
16 Class Counsel shall further apply for, and Defendant shall not oppose, an application or motion
17 by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution
18 of this matter as set forth by declaration testimony in an amount up to Twenty-Five Thousand
19 Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of
20 the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to
21 prosecute, settle, and obtain Final Approval of the settlement in Action. The "future" aspect of
22 the amounts stated herein includes, without limitation, all time and expenses expended by Class
23 Counsel (including any appeals therein). There will be no additional charge of any kind to either
24 the Settlement Class Members or request for additional consideration from Defendant for such
25 work unless, Defendant materially breach this Agreement, including any term regarding funding,
26 and further efforts are necessary from Class Counsel to remedy said breach, including, without
27 limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees
28 and/or litigation costs and expenses in amounts that are less than the amounts provided for herein,

then the unapproved portion(s) shall be a part of the Net Settlement Amount.

13. SERVICE AWARD TO PLAINTIFF

Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in and assistance with the Class Action. Any Service Award awarded to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

14. TAXATION AND ALLOCATION

a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that the employees' share of taxes and withholdings with respect to the wage-portion of the Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

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

c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of payroll taxes as described above.

d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION

The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA and twenty-five percent (25%) (\$5,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the PAGA Period.

16. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties shall be restored to their respective positions in the Action prior to entry of this Settlement. If this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

17. INCREASE IN WORKWEEKS

Defendant represents that there are no more than 2,550 Workweeks worked during the Class Period on October 16, 2016 through May 24, 2022. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 2,250 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 2,550 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement

1 Amount (\$100,000.00) by 2,550, which amounts to a Workweek Value of \$39.22. Thus, for
2 example, should there be 2,900 Workweeks in the Class Period, then the Gross Settlement
3 Amount shall be increased by \$13,727.00. ((2,900 Workweeks – 2,550 Workweeks) x \$39.22
4 per Workweek.) The Gross Settlement Amount shall not be reduced as a result of the total
5 Workweeks falling below Defendant’s estimate of 2,550.

6 **18. NOTICE OF JUDGMENT**

7 In addition to any duties set out herein, the Settlement Administrator shall provide
8 notice of the Final Judgment entered in the Action by posting the same on its website for a
9 period of no less than four (4) years.

10 **19. MISCELLANEOUS PROVISIONS**

11 **A. Interpretation of the Agreement.**

12 This Agreement constitutes the entire agreement between the Parties with respect to its
13 subject matter. Except as expressly provided herein, this Agreement has not been executed in
14 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
15 written representations or terms shall modify, vary or contradict its terms. In entering into this
16 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
17 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
18 enforced under the laws of the State of California, both in its procedural and substantive aspects,
19 without regard to its conflict of law provisions. Any claim arising out of or relating to the
20 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
21 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendant
22 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
23 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
24 and each of them, participated in the negotiation and drafting of this Agreement and had available
25 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
26 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
27 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
28 by the Court.

1 **B. Further Cooperation.**

2 The Parties and their respective attorneys shall proceed diligently to prepare and execute
3 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
4 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
5 will not take any action inconsistent with this Agreement, including, without limitation,
6 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
7 Party has taken actions inconsistent with the Settlement, including, without limitation,
8 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
9 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
10 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
11 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
12 opt-outs and/or objections.

13 **C. Counterparts.**

14 The Agreement may be executed in one or more actual or non-original counterparts, all
15 of which will be considered one and the same instrument and all of which will be considered
16 duplicate originals.

17 **D. Authority.**

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

20 **D. No Third-Party Beneficiaries.**

21 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California,
22 Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-
23 party beneficiaries.

24 **F. Deadlines Falling on Weekends or Holidays.**

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

27 **G. Severability.**

1 In the event that one or more of the provisions contained in this Agreement shall for any
2 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
3 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
4 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
5 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

6
7 **IT IS SO AGREED:**

8 Dated: 08/22, 2022



Jesus Gonzalez (Aug 11, 2022 13:40 PDT)

JESUS R. GONZALEZ

Plaintiff and Class Representative

9
10
11
12 Dated: _____, 2022

TOTAL EDUCATION SOLUTIONS, INC.

Defendant

By:

Its:

13
14
15
16
17 **AGREED AS TO FORM ONLY:**

18 Dated: August 12, 2022



DAVID D. BIBIYAN

VEDANG J. PATEL

Counsel for Plaintiff JESUS R. GONZALEZ

19
20
21 Dated: August 10, 2022, 2022



GRACE Y. HOROUPIAN

SEAN T. KINGSTON

Counsel for Defendant, TOTAL
EDUCATION SOLUTIONS, INC.

1 In the event that one or more of the provisions contained in this Agreement shall for any
2 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
3 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
4 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
5 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.
6

7 **IT IS SO AGREED:**

8 Dated: _____, 2022

JESUS R. GONZALEZ
Plaintiff and Class Representative

11 Dated: 8/10, 2022

Staci Hazlett
TOTAL EDUCATION SOLUTIONS, INC.
Defendant
By: Staci Hazlett
Its: HR Director

17 **AGREED AS TO FORM ONLY:**

18 Dated: _____, 2022

DAVID D. BIBIYAN
VEDANG J. PATEL
Counsel for Plaintiff JESUS R. GONZALEZ

21 Dated: _____, 2022

GRACE Y. HOROUPIAN
SEAN T. KINGSTON
Counsel for Defendant, TOTAL
EDUCATION SOLUTIONS, INC.