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on behalf of all similarly situated individuals

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF STANISLAUS
17

18 JORDYN TERRY, on behalf of herself and
19 on behalf of all similarly situated individuals,

20 Plaintiff,

21 v.

22 PHYSICIANS' SURGERY CENTER OF
MODESTO, INC., a California corporation,
23 d/b/a RIVER SURGICAL INSTITUTE, and
DOES 1 through 10, inclusive,

24 Defendant.
25
26
27
28

Case No. CV-21-001716

Assigned for all Purposes to:
Honorable Stacey Speiller
Department 22

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

Complaint Filed: April 1, 2021
Trial Date: None set

1 IT IS HEREBY STIPULATED AND AGREED, by and among Defendant Physicians'
2 Surgery Center of Modesto, Inc. ("Defendant"), on the one hand, and Plaintiff Jordyn Terry
3 ("Plaintiff") and the Class (as defined below, excluding those Class Members who Opt-Out), on the
4 other hand, subject to the approval of the Court pursuant to California Code of Civil Procedure
5 section 382 and California Rules of Court rule 3.769, that the settlement of this action shall be
6 effectuated upon and subject to the following terms and conditions:

7 **A. DEFINITIONS**

8 As used in this Joint Stipulation of Class Action Settlement ("Stipulation"), the following
9 terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation
10 are not specifically defined below, but are defined elsewhere in the Stipulation, they are incorporated
11 by reference into this definition section.

12 "Action" shall mean the class and PAGA action entitled *Terry v. Physicians' Surgery Center*
13 *of Modesto, Inc.*, case number CV-21-001716, pending before the Superior Court of the State of
14 California for the County of Stanislaus.

15 "Agreement," "Stipulation," "Stipulation of Settlement," "Settlement Agreement," or
16 "Stipulation and Agreement" shall mean this Joint Stipulation of Class Action Settlement, including
17 any attached Exhibits.

18 "Class Counsel" shall mean Daniel F. Gaines, Alex P. Katofsky, and Evan S. Gaines of
19 Gaines & Gaines, APLC, 27200 Agoura Rd, Suite 101, Calabasas, CA 91301, Telephone:
20 818.703.8985, Facsimile: 818.703.8984.

21 "Class Counsel Attorneys' Fees and Costs" is the amount to be paid to Class Counsel for fees
22 and costs, pursuant to the terms of this Stipulation and subject to approval by the Court.

23 "Class Member" or "Settlement Class Member" or "Settlement Class" shall mean any person
24 who is a member of the Settlement Class, or, if such person is incompetent or deceased, the person's
25 legal guardian, executor, heir or successor in interest.

26 "Class" and "Class Member" shall mean any person who was employed by Defendant in
27 California as a non-exempt employee during the period April 1, 2017 to the earlier of December 21,
28 2021 or the Date of Preliminary Approval of this Settlement ("Preliminary Approval Date"),

1 whichever is occurs first. Excluded from the definition of Class is any person who signed an
2 arbitration agreement with a class action waiver and/or a prior release agreement with Defendant.

3 "Class Notice" shall mean the Notice to Class of Proposed Settlement and Final Approval
4 Hearing, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise approved by the Court,
5 which is to be mailed to Class Members.

6 "Class Participant(s)" shall mean any and all Class Members other than those who timely
7 request exclusion (*i.e.*, who elect to "opt out") as provided herein.

8 "Class Period" shall mean April 1, 2017 through December 21, 2021.

9 "Class Settlement" or "Settlement" shall mean the settlement embodied in this Stipulation,
10 which is subject to Court approval.

11 "Complaint" shall mean the Complaint filed by Plaintiff in the Action.

12 "Court" shall mean the Superior Court of the County of Stanislaus, State of California.

13 "Days" shall mean calendar days unless otherwise specifically stated.

14 "Defense Counsel" or "Counsel for Defendant" shall mean Procopio, Cory, Hargreaves &
15 Savitch LLP.

16 "Defendant" shall mean Physicians' Surgery Center of Modesto, Inc. and its present and
17 former owners, stockholders, directors, members, officers, parent companies, subsidiaries, affiliates,
18 successors, predecessors, related entities, and joint venturers, and each of its respective present and
19 former officers, directors, stockholders, managers, agents, employees, assigns or legal
20 representatives.

21 "Final Approval Date" shall mean the date upon which the Court enters an Order approving
22 the Class Settlement, after having determined the Class Settlement is fair, adequate, and reasonable
23 to the Class as a whole, following: (i) notice to the Class; (ii) an opportunity to submit timely
24 objections to the settlement; and (iii) a hearing on the fairness of the terms of the settlement.

25 "Final Approval Hearing" shall mean the final hearing held to ascertain the fairness,
26 reasonableness, and adequacy of the Class Settlement, at which time the Court will enter its Order
27 approving the Class Settlement.

28 "Final Date for Submission of Opt-Outs" shall mean the date that is forty-five (45) days after

1 the date the Class Notice is sent to the Settlement Class.

2 “General Release Payment” or “Enhancement Payment” shall mean any additional monetary
3 payment provided to the Plaintiff for her efforts on behalf of the Class in this Action and in exchange
4 for her general release in favor of the Defendant as detailed herein.

5 “Gross Settlement Amount” shall mean the One Hundred Eighty-Seven Thousand Five
6 Hundred Dollars (\$187,500.00) more fully described in Section E below, from which Class
7 Participants’ payments, attorneys’ fees, attorneys’ costs, the litigation costs, the General Release
8 Payment, the PAGA Payment and the Settlement Administrator’s expenses will be paid.

9 “Hearing on Preliminary Approval” shall mean the hearing held on the motion for
10 preliminary approval of the Class Settlement.

11 “Individual Settlement Amount” shall mean the amount to be, and which is, distributed to
12 any and each Class Participant.

13 “Net Settlement Amount” means the Gross Settlement Amount less Class Counsel Attorneys’
14 Fees and Costs, Plaintiff’s General Release Payment, the PAGA Payment, and the Settlement
15 Administrator’s expenses, and shall be the maximum amount to be distributed to Class Participants.

16 “Notice Packet” shall mean the Class Notice and postage-prepaid reply envelope that is
17 mailed by the Settlement Administrator to Class Members.

18 “Opt-Out(s)” shall mean any and all Class Members who timely and validly request exclusion
19 from the Class by submitting an Opt-Out Form in accordance with the terms of the Class Notice.

20 “Opt-Out Form” shall mean a document completed by a Class Member by which such Class
21 Member requests exclusion from the Settlement, as set forth in the form of **Exhibit 2**.

22 “PAGA claim” shall mean any and all claims asserted in the Action under California Labor
23 Code section 2699 *et seq.*

24 “PAGA Members” shall mean any and all non-exempt employees who worked for
25 Defendant within the State of California from December 17, 2019 through December 21, 2021 (the
26 “PAGA Period”).

27 “PAGA Payment” shall mean the Eighteen Thousand Seven Hundred and Fifty Dollars
28 (\$18,750.00) allocated to settlement of the PAGA claim, seventy five percent (75%) of which will

1 be paid to the California Labor and Workforce Development Agency, and the remaining twenty five
2 percent (25%) to be distributed to PAGA Members as part of the Settlement.

3 "PAGA Released Claims" means any and all wage-and-hour claims, rights, demands,
4 liabilities and causes of action of every nature and description whether pled or could have been pled
5 arising from the PAGA claims litigated in the Action against Defendant and the Released Parties,
6 during employment in a non-exempt position in California during the PAGA Period, based upon the
7 following categories of allegations: failure to provide meal periods, failure to pay for meal periods,
8 failure to provide rest periods, failure to pay for rest periods, failure to provide accurate itemized
9 wage statements, failure to pay all wages due upon termination of employment, breach of contract,
10 accounting, violation of the Industrial Welfare Commission Wage Orders, violation of municipal
11 ordinances, violation of the California Labor Code, as well as any potential attorneys' fees associated
12 with these causes of action or claims under California or federal law. All Class Members will be
13 bound by the PAGA Released Claims, even if they are not Class Participants.

14 "Parties" shall mean Defendant and Plaintiff.

15 "Plaintiff" shall mean Jordyn Terry.

16 "Preliminary Approval Date" means the date upon which the Court enters an Order granting
17 the motion for preliminary approval of the Class Settlement.

18 "Released Claims" means any and all wage-and-hour claims, rights, demands, liabilities and
19 causes of action of every nature and description whether pled or could have been pled arising from
20 the claims litigated in the Action against Defendant and the Released Parties, during employment in
21 a non-exempt position in California during the Class Period, based upon the following categories of
22 allegations: failure to provide meal periods, failure to pay for meal periods, failure to provide rest
23 periods, failure to pay for rest periods, failure to provide accurate itemized wage statements, failure
24 to pay all wages due upon termination of employment, breach of contract, accounting, violation of
25 the Industrial Welfare Commission Wage Orders, violation of municipal ordinances, violation of the
26 California Labor Code, violation of California's unfair business practices laws, and violation of the
27 Private Attorneys General Act ("PAGA") (Cal. Lab. Code § 2699 et seq.), as well as any potential
28 penalties, interest or attorneys' fees associated with these causes of action or claims under California

1 or federal law including but not limited to California Labor Code sections 201-203, 226, 226.3,
2 226.7, 512, 558, 2698, and 2699. A Class Member who does not cash his or her settlement check
3 shall still be deemed to have accepted and agreed to release the Released Claims relating to any
4 claims under California law, unless he or she submits a timely written request for exclusion, which
5 exclusion is inapplicable to the release of Plaintiff's PAGA claim if the Settlement is approved by
6 the Court.

7 "Released Parties" shall mean Defendant, and any of its former and present parents,
8 subsidiaries, and other officers, directors, employees, partners, shareholders and agents, and any
9 other successors, assigns, or legal representatives.

10 "Settlement Administrator" shall mean the firm of Simpluris which the Parties have agreed
11 will be responsible for administration of the Settlement and related matters.

12 "Settlement Fund Account" shall mean the bank account established pursuant to the terms of
13 this Stipulation from which all monies payable under the terms of this Stipulation shall be paid, as
14 set forth herein.

15 "Settling Parties" shall mean Plaintiff, Class Members who do not Opt-Out, PAGA Members,
16 and Defendant.

17 "Void checks" or "void payments" shall mean any checks or payments issued to Class
18 Participants and PAGA Members pursuant to this Stipulation that are not cashed or presented for
19 payment within six months from the date of issuance.

20 "Weeks Worked" shall mean, as to Class Members, all weeks during the Class Period that a
21 Class Member actually worked as a non-exempt employee in California for Defendant during the
22 Class Period, and as to PAGA Members, all weeks during the PAGA Period that a PAGA Member
23 actually worked as a non-exempt employee in California for Defendant during the PAGA Period

24 **B. BACKGROUND OF ACTION**

25 Plaintiff filed her Class Action Complaint on April 1, 2021 in Stanislaus Superior Court, Case
26 No. CV-21-001716. In her Complaint, Plaintiff alleged the following causes of action: (1) failure to
27 provide rest periods, (2) failure to provide meal periods, (3) failure to provide lawful itemized wage
28

1 statements, (4) failure to pay wages due at separation of employment, (5) violation of California
2 Business & Professions Code section 17200, and (6) civil penalties under the PAGA.

3 The proposed Class is estimated to be comprised of approximately 31 persons. The group of
4 PAGA Members is approximately 47.

5 **C. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS**

6 **1. Discovery, Investigation and Research**

7 Class Counsel has conducted an investigation during the prosecution of the Action. This
8 discovery and investigation has included, among other things, (a) inspection and analysis of
9 extensive documents produced by Defendant in advance of the mediations, including a sampling of
10 employees' time records and wage records, Defendant's arbitration agreements, Defendant's
11 employment policies in effect during the Class Period, and information regarding the size of the class
12 and PAGA group (including weeks worked and average rates of pay); (b) analysis of the legal
13 positions taken by Defendant; (c) analysis of potential class and PAGA damages; and (d) research
14 of the applicable law regarding the claims asserted in the Action and the potential defenses thereto.

15 Plaintiff has vigorously prosecuted this case, and Defendant has vigorously contested it.
16 Informal discovery has been extensive. Defendant has produced significant electronic time and
17 payroll records to Class Counsel. Additionally, Defendant provided Class Counsel with data to
18 support the valuation of the settlement. Accordingly, the Parties have engaged in sufficient discovery
19 and investigation to assess the relative merits of Plaintiff's claims and Defendant's defenses to them.

20 **2. Allegations of Plaintiff and Benefits of Settlement**

21 The discussions between counsel, and the informal discovery conducted in this matter, have
22 been adequate to give Plaintiff and Class Counsel a sound understanding of the merits of their
23 positions and to evaluate the worth of the claims of the Class. This Settlement was reached after
24 Class Counsel thoroughly reviewed all available evidence and after arm's-length bargaining by the
25 Parties, including attendance at a full-day mediation before experienced wage and hour class action
26 mediator Scott Markus on September 10, 2021. The informal discovery conducted in this Action,
27 and the information exchanged through the Parties' negotiations, are sufficient to assess reliably the
28 merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

1 Plaintiff and Class Counsel believe the causes, allegations and contentions asserted in the
2 Action are brought in good faith. However, Plaintiff and Class Counsel recognize and acknowledge
3 the expense and delay of continued lengthy proceedings necessary to prosecute the Action against
4 Defendant through trial and through appeals. Class Counsel has taken into account the uncertain
5 outcome and the risk of any litigation, the risk of continued litigation in complex actions such as this,
6 as well as the difficulties and delays inherent in such litigation, the potential difficulty maintaining
7 the Action as a Class Action given the arguably different circumstances surrounding each Class
8 Member's claims, and Defendant's history of securing arbitration and release agreements from
9 putative class members. Class Counsel is also mindful of the inherent problems of proof under, and
10 possible defenses to, the claims alleged in the Action. Class Counsel has also taken into
11 consideration the ameliorating measures adopted by Defendant, both before and after the Action was
12 filed. Accordingly, Class Counsel believes the Settlement set forth in this Stipulation confers
13 substantial benefits upon the Class Participants and the PAGA Members, and that an independent
14 review of this Stipulation of Settlement by the Court in the approval process will confirm this
15 conclusion. Based on their own independent investigation and evaluation, assisted in part by the use
16 and consultation of experts Plaintiff hired, Class Counsel has determined the Settlement set forth in
17 the Stipulation is in the best interests of Plaintiff and the members of the Settlement Class.

18 **3. Defendant's Denials of Wrongdoing and Liability.**

19 Defendant has denied and continues to deny generally each and all of the claims and
20 contentions alleged in the Action. Defendant has expressly denied and continues to deny all charges
21 of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions
22 alleged, or that could have been alleged, in the Action. Defendant adopted a comprehensive
23 timekeeping and meal period compliance program before the Action was filed which includes
24 procedures to (1) encourage employees to report timekeeping and meal or rest period problems, (2)
25 require supervisors and payroll employees to address and correct such problems, (3) discipline
26 supervisors for failing to follow Defendant's policies and guidelines, and (4) automatically pay meal
27 period premiums in the event employees' time records indicate a potential missed, short, or untimely
28 meal period. Defendant also conducted an internal investigation, prior to this Action, whereby it

1 assessed potential past noncompliant meal periods, estimated potential unpaid meal period
2 premiums, and offered employees a payment for disputed meal period premiums in exchange for a
3 release of claims. Defendant believes that these programs uniquely demonstrate its good faith efforts
4 to comply with California wage and hour law.

5 Nonetheless, Defendant has concluded that the further conduct of the Action would be
6 protracted and expensive, and it is desirable the Action be fully and finally settled in the manner and
7 upon the terms and conditions set forth in this Stipulation in order to limit further expense,
8 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the
9 operation of Defendant's business without further expensive litigation and the distraction and
10 diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken
11 into account the uncertainty and risks inherent in any litigation, especially in complex cases such as
12 the Action. Defendant has, therefore, determined that it is desirable and beneficial the Action be
13 settled in the manner and upon the terms and conditions set forth in this Stipulation.

14 **4. Intent of the Settlement**

15 The Class Settlement set forth herein intends to achieve the following: (1) entry of an Order
16 preliminarily approving the Class Settlement and granting the relief set forth in this Stipulation of
17 Settlement, including monetary relief to the Class Participants; (2) entry of an order granting Final
18 Approval of the Settlement; (3) entry of final judgment of the Action; and (4) discharge of Released
19 Parties from liability for any and all of the Released Claims.

20 **D. PROCEDURAL ISSUES**

21 **1. Preliminary Approval**

22 Class Counsel will submit this Stipulation to the Court and file an unopposed motion for its
23 preliminary approval.

24 **2. The Settlement Administrator**

25 The firm known as Simpluris will act as Settlement Administrator. The Settlement
26 Administrator will mail the Notice Packet to Class Members, receive and process Opt-Out Forms,
27 objections and disputes, administer the Settlement, calculate Individual Settlement Amounts, handle
28 inquiries from Class Members concerning the Class Settlement and determination of Individual

1 Settlement Amounts, or any other issue, resolve any differences between Defendant's payroll records
2 and information provided by a Class Participant, and distribute payments to Class Participants.
3 Simpluris shall be paid for the expense of notifying the Class Members of the Settlement, processing
4 any forms submitted by the Class Members and distributing payments, which cost is currently
5 estimated at \$4,000.00

6 On a weekly basis, the Settlement Administrator will provide reports to Class and Defense
7 Counsel updating them as to the number of timely received Opt-Out Forms, as well as any disputes
8 or objections submitted by Class Members. The Settlement Administrator will serve on Class and
9 Defense Counsel via e-mail date-stamped copies of the original Opt-Out Forms, challenges, and
10 objections no later than five (5) days after their receipt. The Settlement Administrator will provide
11 Class and Defense Counsel with a declaration of due diligence and proof of mailing of the Class
12 Notice and Opt-Out form which Class Counsel will file with the Court no later than ten (10) days
13 before the Final Approval Hearing. No later than three (3) business days before the Final Approval
14 Hearing, the Settlement Administrator will compile and deliver to Defense and Class Counsel a final
15 report with information regarding: (a) the final pro rata portion of each Class Participant; and (b) the
16 final number of Opt-Outs and objections.

17 All fees and costs of the Settlement Administrator for administration of the Settlement shall
18 be paid from the Gross Settlement Amount.

19 **3. Notice to Class Members and PAGA Members**

20 Notice shall be provided to Class Members and PAGA Members in the following manner:

21 Within thirty (21) days after entry by the Court of its Order of Preliminary Approval,
22 Defendant shall provide the Settlement Administrator with an updated list containing names, social
23 security numbers, dates of employment, weeks worked based on Defendant's payroll records, and
24 last-known mailing addresses for each member of the Class and PAGA Members. Within thirty (30)
25 days of the Preliminary Approval Date, the Settlement Administrator shall send each Class Member
26 and PAGA Member the Notice Packet via first-class United States mail.

27 Before mailing, the Settlement Administrator will perform a search based on the National
28 Change of Address Database information to update and correct for any known or identifiable address

1 changes. Such Class Notice shall be in the form attached hereto as **Exhibit 1**, or as otherwise
2 approved by the Court. The Class Notice shall include the number of weeks worked during the Class
3 Period and shall afford each Class Member the opportunity to challenge the number of weeks worked
4 reflected in Defendant's business records, and to provide evidence supporting any such challenge.
5 An Opt-Out Form, in the form attached hereto as **Exhibit 2**, or as otherwise approved by the Court,
6 shall also be included with the Notice.

7 If a new address is obtained by way of a returned Notice Packet, then the Settlement
8 Administrator shall promptly forward the original Notice Packet to the updated address via first-class
9 regular U.S. mail, indicating on the original Notice Packet the date of such re-mailing. Where a
10 Class Notice is returned as undeliverable, without a forwarding address, the Settlement
11 Administrator will perform a computer/SSN and "skiptrace" search to obtain an updated address,
12 and a second Notice Packet will be sent to any new or different address obtained. For Class Members
13 whose Notice Packet is re-mailed, the deadline for submission of Opt-Out forms or objections shall
14 be extended by fifteen (15) calendar days. However, nothing in this paragraph shall be deemed to
15 extend or modify the deadline for submission of Opt-Out forms or objections. It will be conclusively
16 presumed that if an envelope containing the Notice Packet has not been returned within thirty (30)
17 days of the mailing that the Class Member received the Notice Packet including the Class Notice.

18 At least twelve (12) days before the Final Approval Hearing, the Settlement Administrator
19 shall provide Defense Counsel and Class Counsel with a declaration of Due Diligence and Proof of
20 Mailing with regard to the mailing of the Class Notice and its attempts to locate Class Members. The
21 declaration shall specify the number of Class Members and PAGA Members to whom Class Notices
22 were sent and the number of Class Members and PAGA Members to whom Class Notices were not
23 delivered. Class Counsel shall file this declaration with the Court.

24 **4. No Claim Submissions Required**

25 This is not a claims-made settlement. No Class Member is required to submit a claim or
26 claim form or otherwise prove his or her eligibility for participation in the Settlement. Each Class
27 Member's eligibility for participating shall be determined solely from the fact and extent of his or
28 her employment relationship with Defendant as a non-exempt employee during the Class Period as

1 identified by Defendant's records.

2 **5. Review of Opt-Outs and Objections**

3 Any Class Member who wishes to request exclusion from the Settlement including excluding
4 themselves from any monetary relief and associated releases must submit an Opt Out Form (attached
5 as **Exhibit 2**) pursuant to the directions set forth in the Class Notice, and return the Opt Out Form to
6 the Settlement Administrator post-marked by the Final Date for Submission of Opt-Outs (i.e., the
7 date that is forty-five (45) days after the date the Notice Packet is sent to the Settlement Class). Any
8 Class Member who submits an Opt-Out Form following Court approval of the Settlement, will not
9 be bound by the terms of the Settlement except for the PAGA Released Claims. Class Members who
10 submit an Opt-Out Form will not receive a share of the Settlement funds except their pro rata portion
11 of the PAGA Payment and they may not object to the Settlement.

12 Any Class Member who wishes to object to the Settlement must file with the Court and
13 submit the objection to the Settlement Administrator pursuant to the directions set forth in the Class
14 Notice by the Final Date for Submission of Objections (i.e., the date that is forty-five (45) days after
15 the date the Notice Packet is sent to the Settlement Class).

16 **6. Resolution of Disputes Concerning Weeks Worked**

17 In the event there is any dispute between a Class Participant or PAGA Member regarding the
18 number of weeks worked; then the Settlement Administrator shall make a determination with regard
19 to such dispute after first giving not less than seven (7) days written notice to both Class Counsel
20 and Defense Counsel, and an opportunity, within said seven (7) days, for each to submit additional
21 information bearing on such dispute. The Settlement Administrator shall give written notice to the
22 Parties' counsel of its determination within three (3) business days of the expiration of the seven (7)
23 day notice period. Any Party or Class Participant seek the Court's review of the Settlement
24 Administrator's determination. However, PAGA Members cannot opt out of receiving PAGA
25 Payments and are bound by the PAGA Release regardless of whether they dispute the workweeks or
26 opt out of the class action settlement.

1 **E. SETTLEMENT TERMS**

2 **1. The Settlement Class**

3 For the purposes of this Stipulation, the Settlement Class shall be conditionally certified
4 pursuant to California Code of Civil Procedure section 382.

5 **2. Distribution of the Net Settlement Amount**

6 The claims of all Class Members and PAGA Members are settled for the Gross Settlement
7 Amount of One Hundred Eighty-Seven Thousand Five Hundred Dollars (\$187,500.00), which is
8 inclusive of all Individual Settlement Amounts, the PAGA Payment, Plaintiff's General Release
9 Payment, Class Counsel Attorneys' Fees and Costs and the Settlement Administrator's expenses.
10 One hundred percent (100%) of the Net Settlement Amount shall be paid out to Class Participants.
11 Employer-side payroll taxes will be paid separately by Defendant.

12 Provided no objections to the settlement have been filed, Defendant shall fund the settlement
13 by depositing the requisite amounts in an account established at a bank to be selected by the
14 Settlement Administrator within ten (10) days of the Final Approval Date.

15 The Settlement Administrator shall distribute a pro-rata share of all payments to be made
16 under the terms of this Stipulation no later than fifteen (15) days after Defendant makes the above
17 deposit. The PAGA Payment shall be distributed by the Settlement Administrator to the California
18 Labor and Workforce Development Agency no later than fifteen (15) days after Defendant makes
19 the above deposit, with seventy-five percent (75%) of the PAGA payment being paid to the
20 California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%)
21 being paid to the PAGA Members pursuant to California Labor Code section 2699(i) on a pro-rata
22 basis proportionate to their Weeks Worked during the PAGA Period

23 If objections have been made, then the distributions shall occur no later than fifteen (15) days
24 after the order granting Final Approval has become non-appealable.

25 The Settlement Administrator shall be the only entity authorized to make withdrawals or
26 payments from the Settlement Fund Account. The Settlement Administrator will: (a) acknowledge
27 that it has fiduciary obligations to the Parties, and will attest that it will not allow any disbursements
28 to be made from the Settlement Fund except as expressly authorized by this Stipulation; (b) agree

1 that it will receive no disbursements or fees from the Settlement Fund Account for actions undertaken
2 or expenses incurred without prior approval by Defense and Class Counsel; and (c) acknowledge its
3 obligations to return the entire Settlement Fund to Defendant (less any administrative expenses
4 incurred by the Settlement Administrator) in the event this Stipulation: (i) does not receive final
5 approval by the Court; (ii) is modified or reversed on appeal; and/or (iii) is otherwise rendered null
6 and void.

7 **3. Additional Administrative Duties of the Settlement Administrator**

8 The Settlement Administrator shall report Individual Settlement Amounts to all required
9 taxing and other authorities, withhold the standard employer's and employee's share of payroll taxes
10 from the wage portion of each Individual Settlement Awards, and transmit these amounts to the
11 taxing authorities, and issue IRS Forms W-2 and 1099s. Upon completion of administration of the
12 Settlement, the Settlement Administrator shall provide written certification of such completion to the
13 Court and counsel for all Parties. The Settlement Administrator shall also provide any and all
14 documentation to Defendant necessary to demonstrate that all duties have been performed under this
15 section.

16 **4. Individual Settlement Amounts**

17 Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net
18 Settlement Amount and Individual Settlement Amounts to be paid to PAGA Members shall be paid
19 from the employee allocation from the PAGA Payment.

20 **a. Calculation of Individual Settlement Amounts**

21 From the Net Settlement Amount, the Class Participants' base Individual Settlement
22 Amounts will be calculated as follows: The dollar amount payable to each Class Participant will be
23 calculated by taking the Net Settlement Amount, divided by the total number of Weeks Worked by
24 all members of the Class during the Class Period, multiplied by the total number of Weeks Worked
25 by each individual member of the Class during the Class Period. PAGA Members will receive a pro-
26 rata share of the PAGA Payment based on weeks worked during the PAGA Period.

27 The Settlement Administrator shall distribute 100% of the Net Settlement Amount to the
28 Class Participants. Forms W-2 and 1099 shall be issued to the Class Participants and the PAGA

1 Members for all payments made under this Agreement, as appropriate and in accordance with
2 applicable law.

3 **b. Tax Treatment of Individual Settlement Payments**

4 The Individual Settlement Amounts for Class Participants shall be allocated for tax purposes
5 as follows: (1) 10% percent of each payment shall be deemed wages, as to which legally required
6 state and federal payroll deductions shall be taken and a W-2 Form issued; and (2) 90% shall be
7 deemed interest and penalties as to which a Form 1099 shall be issued. As to PAGA Members, the
8 entire portion of the PAGA payment shall be deemed penalties as to which a Form 1099 shall be
9 issued. Because the precise number of Class Participants is unknown, the amount to be paid to each
10 is not subject to a reliable estimate at this time.

11 **5. General Release/Enhancement Payment for Plaintiff**

12 Plaintiff may receive an approved General Release Payment, in the amount of Seven
13 Thousand Five Hundred Dollars (\$7,500.00) for her efforts on behalf of the Class and aggrieved
14 employees. Defendant shall not oppose any request by Plaintiff for a General Release Payment
15 consistent with this Agreement. The Plaintiff shall sign a General Release of All Claims as a
16 condition of receiving a General Release Payment. Any General Release/Enhancement Payment
17 approved by the Court shall be paid to the Plaintiff from the Gross Settlement Amount, and shall be
18 in addition to any distribution to which she may otherwise be entitled as a Class Member. Such
19 General Release Payment shall not be considered wages, and the Settlement Administrator shall issue
20 Plaintiff a Form 1099 reflecting such payment.

21 **6. Voided Checks**

22 If a Class Participant or PAGA Member does not cash an Individual Settlement Amount
23 check within one hundred eighty (180) days of the postmark date of its mailing to the Class
24 Participant from the Settlement Administrator, the check will become void. Funds unpaid due to
25 void checks shall be paid to the Unclaimed Property Fund of the California State Controller, to be
26 held in the name of the Class Participant and/or PAGA Member.

27 **7. Time for Payment of Individual Settlement Amounts**

28 The Settlement Administrator shall make every effort to mail, by first-class U.S. Mail to the

1 last-known address, the Individual Settlement Amounts to each Class Participant and PAGA Member
2 no later than thirty (30) days after Final Approval as set forth in section E2, if no objections have
3 been made. If objections have been made, then the distributions shall occur no later than fifteen (15)
4 days after the order granting Final Approval has become non-appealable.

5 If the Settlement Administrator is not able to mail the Individual Settlement Amounts to Class
6 Participants and PAGA Members within the time period set forth above, it shall so inform Class
7 Counsel and Defense Counsel, and provide an approximate date by which the Individual Settlement
8 Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute
9 checks to Class Participants and PAGA Members until all the Settlement Administrator's obligations
10 with respect to mailing the Class Notice and processing Opt-Out forms have been satisfied. In the
11 event that any Class Participant or PAGA Member is deceased, payment shall be made payable to
12 the estate of that Class Member or PAGA Member and delivered to the executor or administrator of
13 that estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to
14 section 13101 of the California Probate Code, in which case payment shall be made to the affiant(s)
15 or declarant(s).

16 Within four (4) calendar days of mailing the last Individual Settlement Amounts to Class
17 Participants and PAGA Members, the Settlement Administrator shall provide to Class Counsel and
18 Defense Counsel a declaration of payment.

19 **8. Class Counsel Attorneys' Fees and Litigation Costs**

20 Class Counsel will submit an application for an award of attorneys' fees in the total amount
21 of Thirty-Five Percent (35%) of the Gross Settlement Amount (estimated to be Sixty-Five Thousand
22 Six Hundred Twenty-Five Dollars (\$65,625.00)), to be heard by the Court at the Final Approval
23 Hearing. Class Counsel will also submit an application for an award of actual out-of-pocket and
24 litigation costs not to exceed Ten Thousand Dollars (\$10,000.00). Defendant and its attorneys agree
25 not to object to any such fee and cost application provided such litigation costs are presented to the
26 Court through a sworn declaration of counsel. Class Counsel asserts a statutory fee claim pursuant
27 to the California Labor Code. As a condition of this Settlement, Class Counsel has agreed to pursue
28 their fees only in the manner reflected by this Joint Stipulation. Any fees and costs awarded by the

1 Court shall be paid from the Gross Settlement Amount, and shall not constitute payment to any Class
2 Member(s).

3 Class Counsel Attorneys' Fees and Costs, as awarded by the Court, shall be paid within the
4 timeframe set forth in section E2.

5 Defendant shall bear its own fees and costs of every kind in connection with the Action and
6 the negotiation of the settlement of the Action.

7 Defendant's agreement not to oppose an award of attorneys' fees up of to 35% of the GSA is
8 not intended as a clear sailing provision. Class Counsel has represented to Defendant that the fees
9 are reasonable and proportionate to the work performed and are warranted based on a variety of
10 factors, including the quality of representation, the novelty and complexity of the issues, the results
11 obtained, and the contingent risk presented.

12 **9. PAGA Payment and Notification of LWDA of PAGA Claims and Settlement**

13 Class Counsel shall be responsible for notifying the LWDA of this Settlement and its
14 approval, as required by PAGA. The Settlement Administrator shall distribute to the LWDA the
15 PAGA Payment in accordance with the timeframe set forth in section E2.

16 **10. Extension of Time to Pay and/or Process Claims**

17 Should the Settlement Administrator need more time than is provided under this Stipulation
18 to complete any of its obligations, the Settlement Administrator may request, in writing, such
19 additional time (including an explanation of the need for additional time) from Defense Counsel and
20 Class Counsel. If Defense Counsel and/or Class Counsel do not agree, in writing, to the Settlement
21 Administrator's request for additional time, the Settlement Administrator may seek such additional
22 time from the Court.

23 **11. No Effect on Employee Benefit Plans**

24 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify
25 any previously credited hours of service under any employee benefit plan, policy or bonus program
26 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
27 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans,
28 policies, or bonus programs. The payments made under the terms of this Stipulation shall not be

1 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other
2 form of compensation for the purposes of any of Defendant's benefit plans, policies, overtime
3 compensation or bonus programs. Defendant retains the right to modify the language of its benefits
4 plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid
5 pursuant to this Stipulation are not for "weeks worked," "hours worked," "hours paid," "hours of
6 service," or any similar measuring term as defined by applicable plans, policies, and bonus programs
7 for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional
8 contributions or benefits are not required by this Stipulation.

9 **F. NULLIFICATION OF THE SETTLEMENT AGREEMENT**

10 **1. Non-Approval of the Stipulation of Settlement**

11 In the event: (i) the Court does not enter the order of Preliminary Approval substantially in
12 the same form as specified herein; (ii) the Court does not finally approve the Settlement substantially
13 in the same form as provided herein; (iii) the Court does not enter the Final Judgment; or (iv) the
14 settlement does not become final for any other reasons, this Settlement Agreement shall be null and
15 void. In such a case, the Parties shall proceed in all respects as if this Settlement Agreement had not
16 been executed, except that any fees already incurred by the Settlement Administrator up to the date
17 that Defendant receive notice by the Court of any of the events (i) through (iv) shall be paid by
18 Defendant.

19 **2. Invalidation**

20 Invalidation of any material portion of this Settlement shall invalidate this Settlement in its
21 entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the
22 Settlement are to remain in full force and effect. However, before declaring any provision of this
23 Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the
24 fullest extent possible consistent with applicable precedents so as to define all provisions of this
25 Settlement Agreement valid and enforceable.

26 **3. Class Certification for Settlement Purposes Only**

27 The Parties agree to stipulate to class certification only for purposes of the Settlement. If, for
28 any reason, the Settlement is not approved, the stipulation to certification will be void. The Parties

1 further agree that certification for purposes of the Settlement is not an admission that class
2 certification is proper under the standard applied to contested certification motions and this
3 Settlement will not be admissible in this or any other proceeding as evidence that (i) a class should
4 be certified or (ii) Defendant is liable to Plaintiff or the Class Members.

5 **4. Stay Upon Appeal**

6 In the event of a timely appeal from the judgment, the judgment shall be stayed, and none of
7 the Settlement Fund shall be distributed to Class Members, PAGA Members, the LWDA, or Class
8 Counsel, and the actions required by this Stipulation shall not take place until all appeal rights have
9 been exhausted by operation of law.

10 **5. Defendant's Right to Withdraw Based on Opt-Outs**

11 If, before the Hearing for Final Approval, more than five percent (5%) of all Class Members
12 who otherwise would be Class Participants have filed proper and timely Opt-Out Forms in
13 accordance with the provisions of the Class Notice, Defendant shall have the sole and absolute
14 discretion, but not obligation, to terminate the Settlement.

15 In the event Defendant elects to so terminate this Stipulation of Settlement, Defendant shall,
16 at its own expense, provide such Notice of Termination in writing by first-class U.S. mail to Class
17 Counsel and each Class Member no later than ten (10) calendar days before the Final Approval
18 Hearing.

19 In the event Defendant elects to so terminate this Stipulation of Settlement, it shall not be
20 responsible for paying any of the Class Counsel Attorneys' Fees or Costs set forth herein, including
21 the Attorneys' Fees and costs provided for in Section E, or any other fees and/or costs incurred by
22 Class Counsel to effectuate this Stipulation. In the event of termination by Defendant pursuant to
23 this subparagraph, Defendant shall be responsible for all costs of administration incurred up to the
24 date of termination. In the event Defendant elects to so terminate, such withdrawal shall have the
25 same effect as would non-approval pursuant to Section F(1).

26 Defendant has represented that there are no more than 31 persons in the proposed Class and
27 no more than 47 PAGA Members. Should the number of Class Members increase by more than 10%
28 or the number of PAGA Members increase by more than 20%, Defendant has the right to modify the

1 Class Period and PAGA Period end date(s) so that they fall in the pay period immediately after the
2 number of Class Members exceeded the 10% threshold or the number of PAGA Members exceeded
3 the 20% threshold. Should Defendant refuse to agree to this modification, Plaintiff has the right to
4 terminate this Agreement. In the event Plaintiff elects to so terminate this Stipulation of Settlement,
5 Plaintiff shall provide such Notice of Termination in writing by first-class U.S. mail to Defendant's
6 Counsel.

7 **G. FINAL APPROVAL HEARING AND ENTRY OF JUDGMENT**

8 At the Final Approval Hearing, the Parties shall move the Court for entry of the Final Order,
9 certifying the Class for settlement purposes only, approving the Settlement as being fair, reasonable
10 and adequate to the Class Participants, and for the entry of a Final Judgment consistent with the terms
11 of the Settlement. Class Counsel and Defense Counsel shall submit to the Court such pleading and/or
12 evidence as may be required for the Court's determination.

13 At the Final Approval Hearing, the Court will, among other things, be asked for the entry of
14 an Order permanently enjoining all Class Participants from pursuing and/or seeking to reopen any of
15 the Released Claims.

16 **H. RELEASES AND WAIVERS**

17 **1. Release of Claims by Class Participants**

18 Upon approval of the Stipulation of Settlement at the Final Approval Hearing, and subject to
19 Defendant's payment of the Gross Settlement Amount, all Class Members who have not filed timely,
20 valid Opt-Out Forms, and Plaintiff each release the Released Parties, and each of them, of and from
21 any and all of the Released Claims. A Class Member who does not cash his or her settlement check
22 shall still be deemed to have accepted and agreed to release the Released Claims.

23 It is acknowledged this Settlement is made with respect to disputed claims and each Class
24 Member who has not opted out will be deemed to have acknowledged and agreed that California
25 Labor Code section 206.5 is not applicable. That section provides:

26
27 An employer shall not require the execution of a release of a claim or right on account
28 of wages due, or to become due, or made as an advance on wages to be earned, unless
payment of those wages has been made. A release required or executed in violation
of the provisions of this section shall be null and void as between the employer and

1 the employee. Violation of this section by the employer is a misdemeanor.

2 **2. Release of Claims By PAGA Members**

3 Upon approval of the Stipulation of Settlement at the Final Approval Hearing, and subject to
4 Defendant's payment of the Gross Settlement Amount, all PAGA Members release the Released
5 Parties, and each of them, of and from any and all of the PAGA Released Claims. A PAGA Member
6 who does not cash his or her settlement check shall still be deemed to have accepted and agreed to
7 release the PAGA Released Claims.

8 **3. Release of Claims by Plaintiff**

9 Plaintiff also expressly waives any and all rights and benefits conferred upon her by
10 California Civil Code section 1542 or any other similar state or federal law, which provides as
11 follows: "A general release does not extend to claims that the creditor or releasing party does not
12 know or suspect to exist in his or her favor at the time of executing the release and that, if known by
13 him or her, would have materially affected his or her settlement with the debtor or released party."
14 Plaintiff expressly agrees to release any and all unknown, unsuspected, and unanticipated claims,
15 liabilities, and causes of action she may have against Defendant.

16 **3. Entry of Final Judgment**

17 The Court shall enter final judgment in the Action on the Final Approval Date, if final
18 approval has been granted, as part of the consideration for this Settlement and consistent with
19 California Rules of Court, Rule 3.769. Such entry of final judgment shall operate to permanently
20 bar and enjoin all Class Members (excluding those who submit a valid and timely Opt-Out form)
21 from instituting, commencing, prosecuting, or pursuing, either directly or in any other capacity, any
22 of the Released Claims in this Agreement. Notwithstanding the entry of final judgment in the Action,
23 the Court shall retain jurisdiction to interpret and enforce this Stipulation of Settlement pursuant to
24 California Code of Civil Procedure section 664.6 and as otherwise allowed by law.

25 **4. Preliminary and Permanent Injunction**

26 Except as to Class Members who timely submit a valid Opt Out Form, the Preliminary
27 Approval Order and Final Judgment will contain provisions enjoining Plaintiff and the Class
28

1 Members from prosecuting the claims released herein and enjoining Plaintiff and the Class Members
2 from initiating or continuing other proceedings regarding the claims released herein, including but
3 not limited to filing any claims for monetary relief of the Released Claims before the Division of
4 Labor Standards and Enforcement ("DLSE") or in any forum whatsoever. Inclusion of these
5 provisions in the Order of Preliminary Approval Order and Final Judgment and Order of Final
6 Approval is a material part of the consideration for this Settlement. After approval of the Stipulation
7 of Settlement at the Final Approval Hearing and upon receipt of the final payment under section E
8 (2), the Class Participants and the Plaintiff each release the Released Parties, and each of them, of
9 and from any and all of the Released Claims.

10 **I. DUTIES OF THE PARTIES**

11 **1. Mutual Full Cooperation**

12 The Parties agree to cooperate fully with one another to accomplish and implement the terms
13 of this Stipulation of Settlement. Such cooperation shall include, but not be limited to, execution of
14 such other documents and the taking of such other actions as may reasonably be necessary to fulfill
15 the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated
16 by this Stipulation of Settlement and any other efforts that may become necessary by Court Order,
17 or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after
18 execution of this Stipulation, Class Counsel, with the cooperation of Defendant and its Counsel, shall
19 take all necessary and reasonable steps to secure the Court's Final Approval of this Stipulation.

20 **2. Duty to Support and Defend the Settlement**

21 The Parties hereto agree to abide by all of the terms of the Settlement in good faith and to
22 support the Settlement fully, and to use their best efforts to defend this Class Settlement from any
23 legal challenge, whether by appeal or collateral attack.

24 **3. Duties Before Court Approval**

25 Class Counsel shall promptly submit this Stipulation to the Court for preliminary approval
26 and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon
27 execution of this Stipulation, Class Counsel shall apply to the Court for the entry of a preliminary
28 order, scheduling a hearing on the question of whether the proposed Class Settlement should be

1 approved as fair, reasonable, and adequate as to the Class Members, approving as to form and content
2 the proposed Class Notice attached hereto as **Exhibit 1**, and directing the mailing of the Class Notice
3 to Class Members.

4 **J. MISCELLANEOUS PROVISIONS**

5 **1. Voiding the Stipulation**

6 Pending Court approval and other than as provided in Section E herein, if any of the
7 conditions set forth in this Stipulation are not met and satisfied, this Stipulation shall, at the option
8 of either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and shall not
9 be used or be admissible in any subsequent proceeding, either in this Court or in any other court or
10 forum.

11 **2. Different Facts**

12 The Parties hereto, and each of them, acknowledge that, except for matters expressly
13 represented herein, the facts in relation to the dispute and all claims released by the terms of the
14 Stipulation may turn out to be other than or different from the facts now known by each Party and/or
15 its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly
16 assumes the risk of the existence of different or presently unknown facts, and agrees this Stipulation
17 shall be in all respects effective and binding despite such difference.

18 **3. No Prior Assignments**

19 The Parties hereto represent, covenant, and warrant they have not directly or indirectly
20 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
21 entity any portion of any liability, claim, demand, action, cause of action, or right herein released
22 and discharged except as set forth herein.

23 **4. Non-Admission**

24 Nothing in this Stipulation shall be construed to be or deemed an admission by Defendant of
25 any liability, culpability, negligence, or wrongdoing toward the Plaintiff, the Class Members, or any
26 other person, and Defendant specifically disclaims any liability, culpability, negligence, or
27 wrongdoing toward the Plaintiff, the Class Members, or any other person. Each of the Parties has
28 entered into this Stipulation with the intention to avoid further disputes and litigation with the

1 attendant inconvenience, expenses, and contingencies.

2 **5. Confidentiality**

3 Plaintiff, Defendant, and their respective counsel, recognize and accept that the Parties to this
4 Stipulation desire that the terms of this Stipulation, the fact of the Settlement embodied in this
5 Stipulation, the disposition of the Action, and all matters relating to the litigation of the Action,
6 including discovery proceedings therein, and evidence obtained during the course of the Action, shall
7 not be discussed with or presented to the media or otherwise publicized. The Parties agree that the
8 non-breaching party will be entitled to injunctive relief in the event they learn of a threatened breach
9 of this provision. Notwithstanding the foregoing, Plaintiff and Class Counsel may communicate
10 about the Settlement with Class Members, the Court, and the LWDA in connection with their ethical
11 duties as Class Counsel.

12 **6. Non-Retaliation**

13 Defendant agrees that it will not retaliate against any Class Member for participating in the
14 claims process or the Settlement.

15 **7. Construction**

16 The Parties hereto agree that the terms and conditions of this Stipulation are the result of
17 lengthy, intensive, arm's-length negotiations between the Parties, and this Stipulation is not to be
18 construed in favor of or against any party by reason of the extent to which any party or its counsel
19 participated in the drafting of this Stipulation.

20 **8. Choice of Law**

21 This Stipulation is intended to and shall be governed by the laws of the State of California,
22 without regard to conflicts of law principles.

23 **9. Captions and Interpretations**

24 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
25 reference only, and in no way define, limit, extend, or describe the scope of this Stipulation or any
26 provision therein.

27 **10. Modification**

28 This Stipulation may not be changed, altered, or modified, except in writing signed by the

1 Parties hereto and approved by the Court once fully executed by the Parties. This Stipulation may
2 not be discharged except by performance in accordance with its terms or by a writing signed by the
3 Parties hereto.

4 **11. Integration Clause**

5 This Stipulation of Settlement contains the entire agreement between the Parties relating to
6 the Settlement of the Action and the transactions contemplated thereby, and all prior or
7 contemporaneous agreements, understandings, representations, and statements, whether oral or
8 written, and whether by a Party or such Party's legal counsel, are merged herein. No rights under
9 this Stipulation may be waived except in writing.

10 **12. Exhibits Incorporated by Reference**

11 The terms of this Agreement include the terms set forth in any attached Exhibit, which are
12 incorporated by this reference as though fully set forth herein. Any Exhibit to this Agreement is an
13 integral part of the Settlement.

14 **13. Successors and Assigns**

15 This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their
16 respective heirs, trustees, executors, administrators, successors, and assigns.

17 **14. Class Counsel Signatories**

18 Because the Members of the Class are so numerous, the Parties agree that it is impossible or
19 impractical to have each Class Member sign this Stipulation. It is agreed that, for purposes of seeking
20 approval of the Class Settlement, this Stipulation may be executed on behalf of the Class Members
21 who do not Opt-Out of the Settlement by Class Counsel and Plaintiff.

22 **15. Corporate Signatories**

23 Any person executing this Stipulation or any such related document on behalf of a corporate
24 signatory hereby warrants and promises, for the benefit of all Parties hereto, that such person has
25 been duly authorized by such corporation to execute this Stipulation or any such related document.

26 ///

27 ///

28 ///

This Stipulation shall become effective upon its execution by all of the undersigned. The Settling Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument. A facsimile or electronic signature shall be as valid and enforceable as an original signature.

Dated: _____, 2022

By _____

Dated: _____, 2022

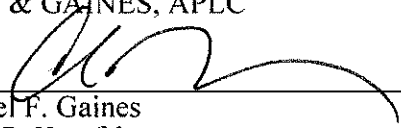
DocuSigned by:
Jordynna Terry
E518EDACAA9C4C3

Jordyn Terry

1 **APPROVED AS TO FORM AND CONTENT**

2
3 Dated: 4/4, 2022

GAINES & GAINES, APLC

By 

Daniel F. Gaines
Alex P. Katofsky
Evan S. Gaines
Attorneys for Plaintiff

4
5
6
7
8
9 Dated: _____, 2022

PROCOPIO, CORY, HARGREAVES & SAVITCH

By _____

Marie Burke Kenny
Clint S. Engleson
Attorneys for Defendant

EXHIBIT 1

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

JORDYN TERRY, on behalf of herself and on
behalf of all similarly situated individuals.

Plaintiff,

v.

PHYSICIANS' SURGERY CENTER OF
MODESTO, INC., a California corporation,
d/b/a RIVER SURGICAL INSTITUTE, and
DOES 1 through 10, inclusive,

Defendants.

Case No. CV-21-001716

Assigned for all Purposes to: Honorable Stacey
Speiller, Department 22

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

1. A settlement will provide \$187,500 to pay claims to all individuals who worked for Physicians' Surgery Center of Modesto, Inc. ("Defendant") as a non-exempt employee in California at any time between April 1, 2017 through December 21, 2021.
2. The settlement resolves a lawsuit alleging that Defendant failed to provide compliant meal and rest periods or premium compensation in lieu thereof; timely issue final wages upon separation of employment; and issue accurate and complete itemized wage statements. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
3. Lawyers for the employees will ask the Court to award them up to \$65,625 as attorneys' fees and \$10,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
4. Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Physicians' Surgery Center of Modesto, Inc., about the legal claims that were brought in this case. Even if you exclude yourself, you will remain bound by the release of PAGA claims.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On April 1, 2021, Plaintiff Jordyn Terry ("Plaintiff"), a former employee of Physicians' Surgery Center of Modesto, Inc., filed this lawsuit in the Stanislaus County Superior Court. The lawsuit alleges violations of the California Labor Code and California Business and Professions Code. The lawsuit seeks to certify a class of all current and former non-exempt California employees of Defendant at any time between April 1, 2017 through December 21, 2021 ("Class Period"). Specifically, the lawsuit alleges that members of the Class were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; and were not issued accurate and complete itemized wage statements. The Settlement seeks recovery of wages, damages, interest, statutory and civil penalties, restitution, attorneys' fees and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Gaines & Gaines, APLC

4550 E. Thousand Oaks Blvd., Suite 100

Westlake Village, CA 91362

Phone: (866) 550-0855

Defendant's Attorneys

Marie Burke Kenny, Esq.

Clint S. Engleson, Esq.

PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP

525 B Street, Suite 2200

San Diego, CA 92101

Phone: (619) 238-1900

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Joint Stipulation of Class Action Settlement ("Settlement" or "Settlement Agreement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all individuals who worked for Physicians' Surgery Center of Modesto, Inc. as a non-exempt employee in California at any time between April 1, 2017 and December 21, 2021.

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$187,500 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Amount.

The "Net Settlement Amount" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will fix these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$65,625;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$10,000;

(c) **Service Payment to the Class Representative** in an amount set by the Court, not to exceed \$7,500 for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$4,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$18,750 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). 75% or \$14,062.50, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining 25% or \$4,687.50, shall be paid to PAGA Members.

3. Individual Payment Amount.

Your share of the Net Settlement Amount will be determined by the formula detailed in Section E, below.

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Class Release applicable to all Class Members who do not opt out of the class settlement:

Upon approval of the Stipulation of Settlement at the Final Approval Hearing, and subject to Defendant's payment of the Gross Settlement Amount, all Class Members who have not filed timely, valid Opt-Out Forms, and Plaintiff each release the Released Parties, and each of them, of and from any and all of the Released Claims. A Class Member who does not cash his or her settlement check shall still be deemed to have accepted and agreed to release the Released Claims.

It is acknowledged this Settlement is made with respect to disputed claims and each Class Member who has not opted out will be deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable. That section provides:

An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee. Violation of this section by the employer is a misdemeanor.

The "Released Claims" are any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description whether pled or could have been pled arising from the claims litigated in the Action against Defendant and the Released Parties, during employment in a non-exempt position in California during the Class Period (April 1, 2017 through December 21, 2021), based upon the following categories of allegations: failure to provide meal periods, failure to pay for meal periods, failure to provide rest periods, failure to pay for rest periods, failure to provide accurate itemized wage statements, failure to pay all wages due upon termination of employment, breach of contract, accounting, violation of the Industrial Welfare Commission Wage Orders, violation of municipal ordinances, violation of the California Labor Code, violation of California's unfair business practices laws, and violation of the Private Attorneys General Act ("PAGA") (Cal. Lab. Code § 2699 et seq.), as well as any potential penalties, interest or attorneys' fees associated with these causes of action or claims under California or federal law including but not limited to California Labor Code sections 201-203, 226, 226.3, 226.7, 512, 558, 2698, and 2699. A Class Member who does not cash his or her settlement check shall still be deemed to have accepted and agreed to release the Released Claims relating to any claims under California law, unless he or she submits a timely written request for exclusion, which exclusion is inapplicable to the release of Plaintiff's PAGA claim if the Settlement is approved by the Court.

PAGA Release applicable to all employees, even those who opt out of the class settlement:

Upon approval of the Stipulation of Settlement at the Final Approval Hearing, and subject to Defendant's payment of the Gross Settlement Amount, all PAGA Members (all non-exempt employees who worked for Defendant within the State of California from December 17, 2019 through December 21, 2021) release the Released Parties, and each of them, of and from any and all of the PAGA Released Claims. A PAGA Member who does not cash his or her settlement check shall still be deemed to have accepted and agreed to release the PAGA Released Claims.

The "PAGA Released Claims" are any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description whether pled or could have been pled arising from the PAGA claims litigated in the Action against Defendant and the Released Parties, during employment in a non-exempt position in California during the PAGA Period (December 17, 2019 through December 21, 2021), based upon the following categories of allegations: failure to provide meal periods, failure to pay for meal periods, failure to provide rest periods, failure to pay for rest periods, failure to provide accurate itemized wage statements, failure to pay all wages due upon termination of employment, breach of contract, accounting, violation of the Industrial Welfare Commission Wage Orders, violation of municipal ordinances, violation of the California Labor Code, as well as any potential attorneys' fees associated with these causes of action or claims under California or federal law. All Class Members will be bound by the PAGA Released Claims, even if they are not Class Participants.

"Released Parties" means Defendant, and any of its former and present parents, subsidiaries, and other officers, directors, employees, partners, shareholders and agents, and any other successors, assigns, or legal representatives.

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Settlement Amount," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form).

The dollar amount payable to each Class Participant will be calculated by taking the Net Settlement Amount, divided by the total number of Weeks Worked by all members of the Class during the Class Period, multiplied by the total number of Weeks Worked by each individual member of the Class during the Class Period. PAGA Members will receive a pro-rata share of the PAGA Payment based on weeks worked during the PAGA Period.

The Settlement Administrator shall distribute 100% of the Net Settlement Amount to the Class Participants. Forms W-2 and 1099 shall be issued to the Class Participants and the PAGA Members for all payments made under this Agreement, as appropriate and in accordance with applicable law.

The Individual Settlement Amounts for Class Participants shall be allocated for tax purposes as follows: (1) 10% percent of each payment shall be deemed wages, as to which legally required state and federal payroll deductions shall be taken and a W-2 Form issued; and (2) 90% shall be deemed interest and penalties as to which a Form 1099 shall be issued. As to PAGA Members, the entire portion of the PAGA payment shall be deemed penalties as to which a Form 1099 shall be issued. Because the precise number of Class Participants is unknown, the amount to be paid to each is not subject to a reliable estimate at this time.

According to the records of Defendant, you worked [] weeks while employed as a non-exempt employee in California from April 1, 2017 through December 31, 2021 and [] weeks while employed as a non-exempt employee in California from December 17, 2019 through December 31, 2021. Based on these weeks worked, you are entitled to an Individual Settlement Amount of

approximately \$[] and a PAGA Payment of \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at 8:30 a.m., in the Courtroom of Judge Stacey Speiller of the Stanislaus County Superior Court, Department 22, located at 801 10th Street, 4th Floor, Modesto, California 95354. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

1. OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

2. OPTION 2 – OBJECT TO THE SETTLEMENT

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

3. OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT

You have a right to exclude yourself ("opt out") from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against the Defendant and pursue your own

claims in a separate suit, except that if you are a PAGA Member, you will be bound by the PAGA Release and receive a portion of the PAGA Payment, even if you opt out from the Settlement Class. You can opt out of the Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than .

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Joint Stipulation of Class Action Settlement” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Stanislaus County Superior Court, located at 801 10th Street, 4th Floor, Modesto, California 95354.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number].

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT OF THE ACTION KNOWN AS *Jordyn Terry vs. Physicians' Surgery Center of Modesto, Inc, and Does 1 Through 10, Inclusive*, Stanislaus County Superior Court, Case No. CV-21-001716. IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.

I confirm that I was employed by Defendant Physicians' Surgery Center of Modesto, Inc. as a non-exempt employee in California between April 1, 2017 and December 21, 2021.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

Physicians' Surgery Center of Modesto, Inc. Claims
Administrator
c/o Simpluris, Inc.

