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Attorneys for Plaintiff Jordyn Terry  
and Proposed Class Counsel

**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 to the Honorable Stacy Speiller, Dept. 22*

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN  
SUPPORT OF UNOPPOSED MOTION AND  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

**DATE: June 3, 2022**

**TIME: 8:30 a.m.**

**DEPT.: 22**

*Action Filed: April 1, 2021*

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am  
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Jordyn Terry ("Terry" or  
4 "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts set  
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I  
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was  
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy  
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my  
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Until his recent retirement, I practiced law with my partner/father, Kenneth, at  
14 Gaines & Gaines, APLC. My father practiced law in California for over 40 years, emphasizing  
15 litigation for the vast majority of his career. Our current practice specializes in litigation, with an  
16 emphasis in employment disputes like this one. Over 95% of our practice is devoted to complex  
17 employment litigation.

18 5. My firm has represented employees in complex employment matters such as this  
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as  
20 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases  
21 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

22 **Factual and Procedural Background:**

23 6. On December 17, 2020, Plaintiff exhausted the pre-filing requirements of the Labor  
24 Code Private Attorneys General Act of 2004 ("PAGA").

25 7. On or about April 1, 2021, Plaintiff initiated the Action by filing a Class and  
26 Representative Action Complaint, on behalf of herself and on behalf of all similarly situated  
27 individuals (the "Complaint"). In her Complaint, Plaintiff alleged the following causes of action:  
28 (1) failure to provide rest periods, (2) failure to provide meal periods, (3) failure to provide lawful

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

3 8. Defendant denies any liability or wrongdoing of any kind associated with the claims  
4 alleged in the Action, and further denies that the Action is appropriate for class treatment for any  
5 purpose other than this settlement. Defendant contends that it has complied at all times with the  
6 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable  
7 federal, state, and local laws and regulations. It is Defendant's position that, if this case were to  
8 be litigated, class certification would be inappropriate because Plaintiff is not an adequate class  
9 representative, Plaintiff's claims are not typical of putative class members, and individual issues  
10 predominate over class issues. The Action, the negotiation and execution of the Settlement  
11 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the  
12 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf  
13 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any  
14 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and  
15 may not be used as, an admission or evidence of the appropriateness of these or similar claims for  
16 class certification in the Action or with respect to any other proceeding.

17 9. The Class Representative contends that Defendant violated the California Labor  
18 Code and Industrial Welfare Commission Wage Orders, and that this case is appropriate for class  
19 certification.

#### 20 **Investigation and Settlement Discussions**

21 10. My colleagues and I have conducted a thorough investigation into the facts and law  
22 during the prosecution of this class action case, including the exchange of extensive formal and  
23 informal discovery and the review and verification of statistical data and other facts and  
24 information provided by Defendant. My colleagues and I have investigated the applicable law as  
25 applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses  
26 thereto, and the damages and other losses claimed by Plaintiff.

27 11. On September 10, 2021, following their exchange of information and documents  
28 regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties

engaged in arm's-length negotiations with the assistance of mediator Scott Markus, Esq., through which they were able to reach the resolution of the Action set forth herein.

**Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**

**Litigation:**

12. Based on our independent investigation and evaluation, my colleagues and I are of the opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

13. The Parties agree that the Settlement Class described herein may be certified for settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement Class is for purposes of the settlement only. If for any reason the settlement is not approved, the certification will have no force or effect and will immediately be revoked. The Parties further agree that certification for purposes of the settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding.

14. The parties jointly prepared the Joint Stipulation of Class Action Settlement ("Settlement Agreement", "Settlement", or "Stip."). A true and correct copy of the Settlement is attached hereto as **Exhibit B**.

15. My office created a comprehensive damage analysis using sampling information obtained through informal discovery. This damage analysis reveals that the negotiated settlement falls within a realistic range of recovery on Class Members' claims.

16. Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members premium wages for each missed, denied and unauthorized 30-minute meal period for every five hours of work and each second missed, denied and unauthorized 30-minute meal period for every ten hours of work. An employer must pay an employee one hour of pay at the employee's regular rate of compensation for each workday that a meal period is not properly provided. When Plaintiff and

1 Class Members did receive meal periods, they would typically be late (commencing after the fifth  
2 hour of work) or short (less than 30 minutes in duration). Based on an analysis performed on  
3 Plaintiff's and Class Members' time and wage records, meal periods were frequently late or cut  
4 short, resulting in a violation rate in excess of 46.5% among all shifts worked. More than 80.3%  
5 of all pay periods worked exhibit some form of meal period violation, be it late, short, or denied  
6 altogether (and reduces to 64.3% when offsetting for meal period premium payments). Although  
7 Defendant did pay some meal period premiums, they represent only 25% of alleged applicable  
8 meal period violations. Defendant also allegedly failed to blend bonus payments (during Christmas  
9 holiday) into the premium meal period rate, thus yielding an underpayment of wages, in violation  
10 of Labor Code §§ 510 and 1194. As such, Plaintiff contends that significant damages and penalties  
11 are owed. The maximum damages for missed, denied and unauthorized 30-minute meal periods  
12 is approximately \$38,460.

13 17. Plaintiff further alleges that Defendant failed to compensate Plaintiff and Class  
14 Members for missed, denied and unauthorized 10-minute rest periods for every four hours of work  
15 or major fraction thereof. An employer must pay an employee one hour of pay at the employee's  
16 regular rate of compensation for each workday that a rest period is not properly provided.  
17 Defendant allegedly failed to do so and therefore has violated Labor Code § 226.7. Plaintiff and  
18 Class Members were simply not provided with compliant, off-duty rest periods during their  
19 employment with Defendant. Although Plaintiff did receive some rest periods, the vast majority  
20 (60%) were not provided or authorized. Typically, Plaintiff contends that there was insufficient  
21 staff on schedule to allow Plaintiff to take a rest period, which resulted in Plaintiff having to work  
22 through her rest periods. Defendant failed to ever pay any rest period premiums. The maximum  
23 damages for missed, denied and unauthorized 10-minute rest periods is approximately \$101,136.

24 18. Plaintiff alleges that Defendant failed to issue Plaintiff and Class Members  
25 accurately itemized wage statements, failed to pay waiting time penalties, and owes PAGA civil  
26 penalties, all derivative of the claims alleged above. These penalty claims could total up to  
27 approximately \$435,500 for wage statement penalties and waiting time penalties, and \$283,400  
28 for PAGA penalties, but required a substantial discount for settlement purposes because they are

1 wholly derivative of the underlying unpaid meal and rest period claims (i.e. if Plaintiff did not  
2 prevail on the underlying claims, she would not prevail on these penalty claims), they are subject  
3 to independent defenses of their own (including proof of injury and/or willfulness), and they are  
4 subject to reduction in the Court's discretion. Plaintiff believed it was unlikely that the Court  
5 would entertain an award of penalties which far exceeded the unpaid meal and rest period premium  
6 wages sought. As such, these claims required a compromise to resolve at this juncture of the  
7 litigation.

8 19. The discount negotiated for settlement here is a reasonable compromise, particularly  
9 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves  
10 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which  
11 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses  
12 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,  
13 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers  
14 various arguments why class treatment is not appropriate, including but not limited to that  
15 individualized inquires among class members predominate over common ones. If Defendant was  
16 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and  
17 most class members would likely not file individual claims.

18 20. Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible  
19 that the Court would agree with Defendant's position that its meal and rest period policies and  
20 practices complied with the requirements of California law or could not be certified. In such a  
21 case, the value Plaintiff's claims would be zero.

22 21. Finally, Plaintiff faced the risk that she would not obtain a maximum  
23 damage/penalty award on all (or any of) her claims. For example, Plaintiff seeks discretionary  
24 penalties pursuant to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that  
25 the Court would not impose all penalties pursuant to its discretionary power to reduce them.

26 22. Defendant strongly contends that its policies and practices do not violate any laws.  
27 It contends that it properly provided for all meal and rest periods and fully compensated their  
28

1 employees for all time worked. It further contends that the wage statements it provides to its  
2 employees are fully compliant with California law.

3 23. When the costs and risks of non-certification and loss on the merits are considered,  
4 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

5 24. The settlement for each Class Member is fair, reasonable and adequate, given the  
6 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such  
7 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the  
8 Action.

9 **Class Certification Requirements:**

10 25. To date, no class has been certified. The Stipulation of Settlement contains a  
11 provision pursuant to which we stipulate to the Court's provisional certification of the  
12 approximately 31-member Settlement Class, but do so for purposes of this settlement only.

13 26. In this case, the Class Members are identifiable from Defendant's employment and  
14 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.  
15 According to Defendant's records, the Class comprises approximately 31 members.

16 27. The Class Members' claims all stem from a common source: members of the  
17 Settlement Class allege that Defendant violated the same Labor Code provisions in connection  
18 with their employment. All members of the Class seek the same relief under the same California  
19 laws (related to unpaid meal and rest period premiums, inaccurate or incomplete wage statements,  
20 failure to timely pay wages due upon separation, and derivative claims). Under these  
21 circumstances, the commonality requirement is satisfied for purposes of certifying the Settlement  
22 Class for settlement purposes.

23 28. In this case, named Plaintiff and proposed Class Representative Jordyn Terry is a  
24 former non-exempt employee who worked for Defendant in the State of California during the  
25 Class Period. She contends that Defendant failed to provide meal and rest periods, failed to  
26 comply with itemized employee wage statement provisions, and failed to timely pay wages at the  
27 separation of employment, in violation of Labor Code §§ 201-203, 226(a), 226.3, 226.7, 512, 558,  
28 2698, and 2699, among other Labor Code provisions. She has the same claims as those that the

1 members of the Settlement Class would reasonably be expected to bring based on the course of  
2 conduct alleged herein.

3 29. Plaintiff has also demonstrated that he will aggressively and competently assert the  
4 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no  
5 apparent conflicts with other class members.

6 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

7 30. Concurrently with the filing of this Motion, Plaintiff's counsel is transmitting the  
8 Settlement Agreement (and these approval documents) to the LWDA, in compliance with Labor  
9 Code § 2699(1)(2).

10 I declare, under penalty of perjury, under the laws of the State of California, that the  
11 foregoing is true and correct. Executed this 9th day of May, 2022 at Calabasas, California.

12 *Daniel F. Gaines*  
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14 DANIEL F. GAINES  
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# **EXHIBIT A**

*Adams v. Newell Rubbermaid*, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

*Adams v. Sam's West, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1403987

*Agredano v. GS Brothers, Inc.*, Los Angeles County Superior Court, Case No. BC445561

*Allen v. Toms Sierra Company*, Nevada County Superior Court, Case No. CU18-082823

*Allen v. Valley Inventory Service, Inc.*, Solano County Superior Court, Case No. FCS034682

*Alvarez v. Pilot Travel Centers, LLC*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

*Alonzo v. Camblin Steel Service, Inc.*, Placer County Superior Court, Case No. SCV0034165

*Amenhotep v. Google, Inc.*, Santa Clara County Superior Court, Case No. 17CV311528

*Anaya v. Progressive Logistics Services, LLC*, Riverside County Superior Court, Case No. RIC1308270

*Andre v. Newell Rubbermaid, Inc.*, San Bernardino County Superior Court, Case No. CIVVS1200282

*Anduha v. ABC Phones of North Carolina, Inc.*, Stanislaus County Superior Court, Case No. 2022729

*Anslow v. Wellington Energy, Inc.*, USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

*Aranda, et al. v. Universal Lumpers of California, Inc.*, San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

*Armendariz v. Integrated Pain Management Medical Group, Inc.*, Kern County Superior Court, Case No. BCV-19-100267-SDS

*Barrow, et al. v. Desmond Foods, L.P.*, Sacramento County Superior Court, Case No. 34-2015-00187227

*Batmanghelich v. Sirius XM Radio Inc.*, USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

*Bosser v. Hooked on Solar*, Yolo County Superior Court, Case No. CVCV-2016-876

*Bourland v. Horizon Personnel Services, Inc.*, Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

*Bowen v. IMJ Material Handling Logistics, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

*Branson v. Mladen Buntich Construction*, San Bernardino County Superior Court, Case No. CIVDS1609129

*Brandt v. Sacramento Auto Insurance Center, Inc.*, San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

*Brown v. 22nd District Agricultural Association*, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

*Brown v. Sierra Central Credit Union*, Sutter County Superior Court, Case No. CVCS18-0002161

*Burgess v. Blue Cross and Blue Shield of South Carolina*, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

*Burgess v. Strategic Retail Solutions, LLC*, Los Angeles County Superior Court, Case No. BC413791

*Calhoun v. Celadon Trucking Services, Inc.*, USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

*Caporicci v. Owens & Minor Distribution, Inc.*, San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

*Carl v. Advanced Call Center Technologies, LLC*, Sacramento County Superior Court, Case No. 34-2013-00148310

*Carlisle, et al. v. Professional Technical Security Services, Inc.*, Case No. CGC18569791

*Carrete v. Gamestop, Inc.*, Imperial County Superior Court, Case No. ECU08501

*Carrillo v. Bimbo Bakeries, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1606813

*Caudillo v. Aegis Treatment Centers, LLC*, Merced County Superior Court, Case No. 18CV-0744

*Cerami v. Metlife, Inc.*, USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

*Charles v. Aaron's Inc.*, Los Angeles County Superior Court, Case No. BC431468

*Charles v. Nursefinders, LLC*, Imperial County Superior Court, Case No. ECU07422

*Cheifer v. JetBlue Airways Corporation*, Los Angeles County Superior Court, Case No. BC451887

*Cheifer, et al. v. WHGM, Inc.*, Los Angeles County Superior Court, Case No. LC104900

*Chong, et al. v. Crescent Northwoods Inn, Inc.*, Del Norte County Superior Court, Case No. CVUJ-2018-1133

*Church v. GameStop, Inc., et. al.*, USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

*Clothier v. Spar Marketing Services, Inc.*, Alameda County Superior Court, Case No: RG12-639317

*Coleman v. Wireless Lifestyle, Inc.*, USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

*Colombo-Beyeler, et al. v. Viking River Cruises, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1611608

*Conlee v. Clark Pacific Corporation*, Yolo County Superior Court, Case No. CV14-1409

*Contreras v. Osmose Utilities Services, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1513998

*Contreras v. West American Service Corporation*, Kings County Superior Court, Case No. 14C0280

*Corona v. Yosemite Meat & Locker Service, Inc.*, Stanislaus County Superior Court, Case No. 2006828

*Cortellessa v. Dotnext, Inc.*, Alameda County Superior Court, Case No. RG09429971

*County v. Ingram Mirco, Inc.*, San Bernardino Superior Court, Case No. CIVRS 1304445

*Covarrubias, et al. v. Petersendean Builder Group, Inc.*, Kern County Superior Court, Case No. BCV-16-101122

*Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf*, San Bernardino County Superior Court, Case No. CIVDS1719283

*Cruz-Garcia v. Lemonade Restaurant Group, LLC*, Los Angeles County Superior Court, Case No. BC478205

*Cunningham v. Performance Contracting, Inc.*, Contra Costa County Superior Court, Case No. C16-02157

*Dabney v. Coneybeare, LLC, et al.*, Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

*Dabney, et al. v. Panera, LLC.*, San Bernardino County Superior Court, Case No. CIVDS1516030

*Diaz, et al. v. Seaworld Entertainment, Inc.*, Imperial County Superior Court, Case No. ECU10046

*Diggs v. Western Waterproofing Company, Inc.*, San Francisco County Superior Court, Case No. CGC-14-539281

*Dismuke v. Rhodes Retail Services, Inc.*, Sacramento County Superior Court, Case No. 34-2011-00105001

*Dorsette v. TA Operating, LLC*, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

*Duran v. The Image of California, Inc.*, Kern County Superior Court, Case No. S-1500-CV-284056 DRL

*Edwards v. Trans World Entertainment Corp.*, San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

*Esakhani v. Central Valley Gaming*, Stanislaus County Superior Court, Case No. 2020667

*Escobar v. SMSSI of California, Inc.*, San Francisco Superior Court, JCCP No. 4776

*Espinosa v. Taltech Construction, et al.*, Los Angeles County Superior Court, Case No. BC590176

*Espinosa v. Bodycote Thermal Processing, Inc.*, Los Angeles County Superior Court, Case No. BC501617

*Espinoza v. Pabco Building Products, LLC*, Los Angeles County Superior Court, Case No. VC065660

*Estrada v. Net Source Communications, Inc.*, Los Angeles County Superior Court, Case No. BC431169

*Estrada v. OS Restaurant Services, LLC*, Santa Clara County Superior Court, Case No. 16CV293249

*Estupinan v. Global Development Strategies, Inc.*, Santa Clara County Superior Court, Case No. 110CV178898

*Fadhl. v. Siemens Healthcare Diagnostics Inc.*, Sacramento County Superior Court, Case No. 34-2017-00209518

*Fernandez v. The Regents of the University of California*, Los Angeles County Superior Court, Case No. BC656256

*Ferrer v. Dish Network Corporation*, Los Angeles County Superior Court, Case No. BC441354

*Findora v. Barry Callebaut USA LLC*, Napa County Superior Court, Case No. 19CV000219

*Flores v. Cintas Corporation*, Los Angeles County Superior Court, Case No. BC400422

*Friel v. Midwest Construction Services, Inc.*, San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

*Gagnon v. Banc of California*, Contra Costa County Superior Court, Case No. C 15-00196

*Galarza v. Bayou Well Services, LLC*, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

*Galarza v. C & H Testing Service LLC*, Kern County Superior Court, Case No. BCV-15-100008 SPC

*Garcia v. Old Dominion Freight Line, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1404636

*Geer v. Applied Aerospace Structures Corp.*, San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

*Getz v. California Cinema Investments, Inc.*, Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

*Gibbs v. M. Lehmann Enterprises*, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

*Gilles v. Schaefer Ambulance Service Inc.*, Imperial County Superior Court, Case No. ECU07970

*Goldman, et al. v. Defender's, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

*Gomez v. Low Desert Empire Pizza, Inc.*, San Bernardino County Superior Court, Case No. CIVVS900392

*Gomez v. Pizza Hut of Southeast Kansas, Inc.*, San Bernardino County Superior Court, Case No. CIVVS900679

*Gonzalez v. Harris Farms, Inc.*, USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

*Guerrero v. Main Electric Supply Company LLC*, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

*Gutierrez v. Asset Management Specialists, Inc.*, Fresno County Superior Court, Case No. 12CECG03577

*Gutierrez v. Linkus Enterprises, Inc.*, Madera County Superior Court, Case No. MCV065774

*Gutierrez v. Shiekh, LLC*, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

*Hairston v. Stanislaus Surgical Hospital*, Stanislaus County Superior Court, Case No. CV-19-000651

*Hindman v. Service Quick, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1724229

*Hogan v. iMobile of CA LLC*, San Bernardino County Superior Court, Case No. CIVDS1409263

*Hogan v. Wireless Evolution Inc.*, Riverside County Superior Court, Case No. MCC1300669

*Hogan v. Wireless That's It! LLC*, Riverside County Superior Court, Case No. RIC1201997

*Holmes v. Bottling Group, LLC*, Stanislaus County Superior Court, Case No. 2022584

*Hooper, et al. v. URS Midwest, Inc., et al.*, San Bernardino Superior Court, Case No. CIVDS1607489

*Humphrey v. Freedomroads, LLC*, Shasta County Superior Court, Case No. 178228

*Hurtado v. Rush Truck Centers of California, Inc.*, Los Angeles County Superior Court, Case No. BC427672

*Hyde v. Dent Wizard International Corporation*, Sacramento County Superior Court, Case No. 34-2015-00173882

*Ibrihim v. Imperfect Foods, Inc.*, San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

*Id-deen v. Educational Services of America*, Solano County Superior Court, Case No. FCS040803

*Isherwood v. Mason Dixon Intermodal, Inc.*, San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

*Jahanbin v. Pacific Mercantile Bank*, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

*Jenkins v. Sedgwick Claims Management Services, Inc.*, Los Angeles Superior Court, Case No. LC101648

*Job v. California Security Services*, Yuba County Superior Court, Case No. 14-0000820

*Johnson v. The Goodyear Tire & Rubber Company*, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

*Jolin v. Bay Cities Recovery, Inc.*, El Dorado County Superior Court, Case No. PC20100458

*Jordan v. Sutter Memorial Hospital*, Stanislaus County Superior Court, Case No. 2023344

*Keebaugh v. Mike Thompson Recreational Vehicles*, San Bernardino County Superior Court, Case No. CIV-DS-1500718

*Kelly v. Robin's Enviro Vac, Inc.*, Kern County Superior Court, Case No. S-1500-CV-282277  
DRL

*King v. Levy Premium Foodservice Limited Partnership*, Alameda County Superior Court, Case No. HG15786353

*Kunsman v. Punch Bowl Sacramento, LLC, et al.*, Sacramento County Superior Court, Case No. 34-2018-00243175

*LaFear v. Encore Education Corporation*, San Bernardino County Superior Court, Case No. CIVDS1802251

*Lanzarin v. AWI Management Corporation*, Solano County Superior Court, Case No. FCS041809

*Lee, et al. v. Foster Dairy Farms*, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

*Lemus, et al. v. Eastridge Workforce Technology, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS-1611470

*Lewis v. American Casino & Entertainment Properties LLC*, San Bernardino County Superior Court, Case No. CIVDS1719094

*Lemus v. On Assignment Staffing Services*, San Bernardino County Superior Court, Case No. CIV-DS-1600497

*Leon v. Piercey West Inc.*, Los Angeles County Superior Court, Case No. BC656874

*Lopez v. Creative Communication Technologies, Inc.*, Imperial County Superior Court, Case No. ECU07851

*Lopez v. Go Green Auto Spa Franchise, Inc., et al.*, Los Angeles County Superior Court, Case No. BC 562212

*Lopez v. Truck Accessories Group, LLC*, Yolo County Superior Court, Case No. CV13798

*Ludlow v. Prince Telecom, LLC*, Stanislaus County Superior Court, Case No. 684239

*Luna v. Express Locations, LLC*, Imperial County Superior Court, Case No. ECU09779

*Macias v. American Tire Distributors, Inc.*, Kern County Superior Court, Case No. BCV-18-101586

*Maldonado v. Hardwood Flooring Liquidators, Inc.*, Los Angeles County Superior Court, Case No. BC642170

*Mansfield v. Cambridge Real Estate Services, Inc.*, Butte County Superior Court, Case No. 160175

*Martinez v. DPI Specialty Foods West*, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

*Martinez v. Styles For Less, Inc.*, San Bernardino County Superior Court, Case No. CIVVS1203057

*Mayne v. John Muir Behavioral Health*, Contra Costa County Superior Court, Case No. C17-00998

*Maze v. Bulldog Freightway, Inc.*, Imperial County Superior Court, Case No. ECU08716

*McCormick v. G & O Body Shop, Inc.*, El Dorado Superior Court, Case No. PC20130291

*McCrary v. Campbell Soup Supply Company*, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

*McDaniel v. Vancary, Inc.*, Tulare County Superior Court, Case No. 268036

*Melgar-Farela v. Guardian Compliance, Inc.*, Los Angeles County Superior Court, Case No. BC481865

*Mendiola v. Tyco Electronics Corporation*, Riverside County Superior Court, Case No. RIC1400721

*Mettler v. Les Schwab Tire Centers of California, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

*Miller v. California Subshine, Inc.*, Los Angeles County Superior Court, Case No. BC637754

*Miller v. Southwest Airlines Co.*, USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

*Mitchell v. Crossmark, Inc.*, USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

*Moghrabi v. Vitaligent, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

*Molina v. Berkshire Hathaway Energy Company, et al.*, Imperial County Superior Court, Case No. ECU000522

*Moore v. Horizon Solar Power, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1410001

*Murray v. Select Media Services, LLC*, Los Angeles County Superior Court, Case No. BC424506

*Myles v. Central Transport LLC*, San Bernardino County Superior Court, Case No. CIVDS1401434

*Navarro v. Mariana Packing Co., Inc.*, Solano County Superior Court, Case No. FCS045935

*Nehrlich, et al. v. RPM Mortgage, Inc.*, Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

*Overton v. Hat World, Inc.*, USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

*Perez v. Alcatel-Lucent USA Inc.*, Imperial County Superior Court, Case No. ECU07977

*Perez v. Major Gloves and Safety, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1710445

*Perry v. Cardinal Health 200, LLC*, Solano County Superior Court, Case No. FCS035303

*Phraxayavong-Briones v. RSM, Inc.*, Sacramento County Superior Court, Case No. 34-2012-00117524

*Pugh v. Wi Spa, LLC*, Imperial County Superior Court, Case No. ECU07932

*Quist v. Knight Transportation, Inc.*, San Bernardino Superior Court, Case No. CIVDS 1615414

*Quitco v. Aviation Fuel Systems Repair, Inc.*, San Bernardino Superior Court, Case No. CIVRS1302311

*Rambeau v. C.C.M. Corporation, et al.*, Sacramento County Court, Case No. 34-2018-00244842

*Rankins v. Roman Empire Living Skills, Inc.*, Los Angeles County Superior Court, Case No. BC713399

*Rees v. Advantel, Incorporated*, Santa Clara County Superior Court, Case No. 16-CV-292219

*Renfrow v. Janra Enterprises, Inc.*, Sacramento County Superior Court, Case No. 3402010-00080471

*Reynolds v. Diamond Pet Food Processors of Ripon*, San Joaquin County Superior Court, Case No. 39-2014-00310818

*Richard v. A-Para Transit Corp.*, Alameda County Superior Court, Case No. HG17870373

*Richardson v. TEC Equipment, Inc., et al.*, Los Angeles County Superior Court, Case No. VC065536

*Robles v. North County Health Project Incorporated*, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

*Rodas v. Monetary Management of California, Inc.*, USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

*Rodriguez v. 20/20 Plumbing & Heating, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1705362

*Rodriguez v. Commerce Distribution Company*, Los Angeles County Superior Court, Case No. BC656259

*Rodriguez v. Valley Oak*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

*Roden v. Service Champions*, San Bernardino County Superior Court, Case No. CIVDS1613183

*Russell v. Bradshaw International*, Imperial County Superior Court, Case No. ECU00853

*Rutledge, et al. v. Healthport Technologies, LLC*, Alameda County Superior Court, Case No. RG16835813

*Sabala v. Econtactlive, Inc.*, Stanislaus County Superior Court, Case No. 684981

*Sabatier v. Picture Perfect Installation, Inc.*, Riverside County Superior Court, Case No. RIC10004953

*Salameh v. Sonomaidence OPCO, LLC*, Sonoma County Superior Court, Case No. SVC264228

*Salazar v. Tag-3 Medical Investment Group, LLC*, Los Angeles County Superior Court, Case No. BC527698

*Salbeck v. Ingredion Incorporated*, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

*Sampson v. Healthnet of California Inc.*, Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

*Sanchez v. Don Roberto Jewelers, Inc.*, Imperial County Superior Court, Case No. ECU06819

*Sanders v. Lionakis*, Sacramento County Superior Court, Case No. 34-2017-00223601

*Santana v. United Staffing Associates, LLC*, Tulare County Superior Court, Case No. 249338

*Schrader v. Adidas Promotional Retail Operations, Inc.*, Los Angeles County Superior Court, Case No. BC414168

*Sebrell v. Pomeroy IT Solutions*, San Bernardino County Superior Court, Case No. CIVDS1721560

*Seymour v. Quest Service Group, LLC*, Sacramento County Superior Court, Case No. 34-2017-00206917

*Silva v. Trical*, San Benito County Superior Court, Case No. CU-16-00218

*Simler v. Polly's Inc.*, Riverside County Superior Court, Case No. RIC 1117862

*Sipin, Scott v. Salesforce.com, Inc.*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

*Skuro v. BMW of North America, LLC*, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

*Smith v. Steelcase, Inc.*, San Bernardino County Superior Court, Case No. CIVDS1725850

*Sohal v. Foster Poultry Farms*, Stanislaus County Superior Court, Case No. 2026605

*Solomon v. City of Los Angeles*, Los Angeles County Superior Court, Case No. BC570345

*Solano v. Vozzcom, Inc.*, Imperial County Superior Court, Case No. ECU09519

*Smith, et al. v. Sente Development, Inc.*, Sacramento County Superior Court, Case No. 34-2016-00196614

*Solorzano v. FDS Manufacturing Corporation*, Los Angeles County Superior Court, Case No. BC542532

*Solowitz v. BakeMark USA LLC*, Los Angeles County Superior Court, Case No. BC467838

*Spampinato v. Wind & Sea Restaurants, Inc.*, San Bernardino County Superior Court, Case No. CIVVS1205154

*Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc.*, San Bernardino County Superior Court, Case No. CIVDS1712220

*Stephens v. C.S., Inc.*, Riverside County Superior Court, Case No. PSC1301224

*Stevenson v. Harvest Management Sub LLC*, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

*Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources*, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

*Thompson v. Sidhu Truck Line, Inc.*, Kern County Superior Court, Case No. BCV-15-101308-DRL

*Tigas v. Ajilon Communications*, Los Angeles County Superior Court, Case No. BC409737

*Torres v. Coastal Employment Inc.*, Los Angeles County Superior Court, Case No. BC529207

*Tran v. CSP Fiber Services*, San Bernardino County Superior Court, Case No. CIVDS172758

*Tripp v. California Guest Services, Inc.*, Plumas County Superior Court, Case No. CV16-00036

*Valdez v. Diamond Landscaping, Inc.*, Los Angeles County Superior Court, Case No. BC497097

*Valencia v. American Team Managers, Inc.*, Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

*Van Son v. Rush Truck Centers of California, Inc.*, Los Angeles County Superior Court, Case No. BC494747

*Vasquez v. Schurman Fine Papers*, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

*Velasquez v. Modesto Ventures, LLC*, Sacramento County Superior Court, Case No. 32-2012-00126159

*Victoria v. Bali Limousines Inc.*, San Mateo County Superior Court, Case No. CIV507774

*Victorian v. Vision X, Inc.*, Los Angeles County Superior Court, Case No. BC400333

*Wade v. Frito Lay*, Kern County Superior Court, Case No. BCV-17-102014

*Walls v. E. & J. Gallo*, Stanislaus County Superior Court, Case No. 2015874

*Warner v. Waterdrops Express Car Wash, LLC*, Tulare County Superior Court, Case No. 265708

*Waybright v. EAH, Inc.*, Stanislaus County Superior Court, Case No. 2011677

*Weiss v. C.A.R. Enterprises, Inc.*, Riverside County Superior Court, Case No. RIC1113165

*White v. Sally Beauty Supply, LLC*, Imperial County Superior Court, Case No. ECU08177

*Williams v. Dennis Dillon RV, LLC*, San Bernardino County Superior Court, Case No. CIVDS 16006879

*Williams v. Closet World, Inc.*, Los Angeles County Superior Court, Case No. BC400178

*Williams v. Progress Rail Services Corporation*, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

*Wing v. Three Group, Inc.*, Los Angeles County Superior Court, Case No. BC643883

*Wilson v. ALSCO, Inc.*, Imperial County Superior Court, Case No. ECU07406

*Wilson v. Michael C. Stead, Inc.*, Contra Costa Superior Court, Case No. C1400135

*Winningham v. Storer Transportation Service*, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

*Woody v. WBN Home Design*, San Bernardino County Superior Court, Case No. CIVDS1613367

*Woods, et al. v. F&B Innovations, LLC*, San Bernardino County Superior Court, Case No. CIVDS1717765

*Woodyard v. Bellus ALC Acquisition, LLC*, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

*Wright v. Social Vocational Services, Inc.*, Kern County Superior Court, Case No. BCV-15-101264

*Ybarra v. New Legend, Inc.*, Sutter County Superior Court, Case No. CVCS-16-2097

*Zaragoza v. Center Automotive, Inc.*, Los Angeles Superior Court, Case No. BC505194

# **EXHIBIT B**

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14 Attorneys for Plaintiff Jordyn Terry, on behalf of herself and  
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 ///

1           **16. Execution in Counterparts**

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

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Defendant Physicians' Surgery Center of Modesto,  
Inc.

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10          Dated: May 6, 2022

DocuSigned by:  
*Patrick Haley*  
By 7864DA3B428E43A  
Patrick Haley

11

12          Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Jordyn Terry

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## 16. Execution in Counterparts

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.

Defendant Physicians' Surgery Center of Modesto,  
Inc.

Dated: \_\_\_\_\_, 2022

By \_\_\_\_\_

April 6, 2022

Dated: \_\_\_\_\_, 2022

DocuSigned by:

Jordyn Terry  
E518E04CAA9C4C3

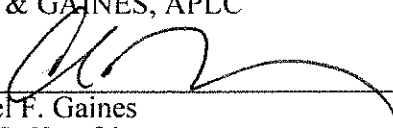
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Jordyn Terry

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

1 **APPROVED AS TO FORM AND CONTENT**

2 GAINES & GAINES, APLC

3 Dated: \_\_\_\_\_, 2022

By \_\_\_\_\_

Daniel F. Gaines

Alex P. Katofsky

Evan S. Gaines

Attorneys for Plaintiff

8 PROCOPIO, CORY, HARGREAVES & SAVITCH

9 Dated: May 6, 2022

By \_\_\_\_\_

*Marie Burke Kenny*

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. Excluded from the Class is any person who signed an arbitration agreement with a class action waiver and/or a prior release agreement with Defendant.
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.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Do Nothing</b>                                        | 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.                                                         |
| <b>Exclude Yourself</b>                                  | 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 <b>no money from the Settlement</b> . 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. |
| <b>Object</b>                                            | 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.                                                                                                                                                                                                                                                                                                           |
| <b>Go to a Hearing</b>                                   | 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.

Note that if you signed an arbitration agreement with a class action waiver and/or a prior release agreement with Defendant, you are not a Class member, but may be a PAGA Member, as detailed further herein.

### **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. If you signed an arbitration agreement with a class action waiver and/or a prior release agreement with Defendant, you are not a Class member, but may be a PAGA Member, as detailed further herein.

**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. Note that if you have "\$0" noted for your Individual Settlement Amount, Defendant's records indicate that you signed an arbitration agreement with a class action waiver and/or a prior release agreement, such that you are not a Class member, but are a PAGA Member.

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 10<sup>th</sup> Street, 4<sup>th</sup> 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 10<sup>th</sup> Street, 4<sup>th</sup> 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.

\_\_\_\_\_  
\_\_\_\_\_